

Part 2
NO-FAULT MOTOR VEHICLE INSURANCE

HEARINGS
BEFORE THE
SUBCOMMITTEE ON COMMERCE AND FINANCE
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS

FIRST SESSION

ON

H. Con. Res. 241

**EXPRESSING THE SENSE OF CONGRESS WITH RESPECT TO
MOTOR VEHICLE INSURANCE AND AN ACCIDENT
COMPENSATION SYSTEM**

**H.R. 4994, H.R. 6528, H.R. 4995, H.R. 7514,
H.R. 3968 (and identical bills),
and H.R. 3970 (and identical bills)**

BILLS RELATING TO NO-FAULT MOTOR VEHICLE INSURANCE

APRIL 20, 21, 22, 26, 27, 28, 29, AND 30, 1971

Serial No. 92-26

Printed for the use of the
Committee on Interstate and Foreign Commerce

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ORGANIZATIONS REPRESENTED AT HEARINGS

Aetna Insurance Co., Frederick D. Watkins, president.

American Bar Association:

Davidson, Louis G., past chairman, section of insurance.

Deacy, Thomas E., Jr., American College of Trial Lawyers.

Kuhn, Edward W., past president.

Reardon, Judge John T., circuit court, Quincy, Ill.

American Federation of Labor-Congress of Industrial Organizations:

Biemiller, Andrew J., director, department of legislation.

Clayman, M. Jacob, administrative director, industrial union department.

American Insurance Association:

Comey, Dale R., chairman, actuarial committee.

Jones, T. Lawrence, president.

Reid, John N., associate general counsel.

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American Trial Lawyers Association, Richard M. Markus, president.

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Morrow, Winston V., Jr., chairman of the board and president.

Murphy, John J., vice president and director of insurance and safety.

Car and Truck Renting and Leasing Association (CATRALA), Frank J. Max, Jr., president.

Consumers Union of the United States:

Klein, Robert, economics editor.

Warne, Dr. Colston E., president.

Hertz Corp.:

Edidin, S. M., vice president and general counsel.

Smalley, Robert A., president.

Housing and Urban Development Department, George K. Bernstein, Administrator, Federal Insurance Administration.

National Association of Independent Insurers:

Lemmon, Vestal, president.

Mertz, Arthur C., vice president and general counsel.

National Association of Insurance Commissioners:

Hanson, John, executive secretary.

Worthington, Lorne R., president.

National Association of Mutual Insurance Agents, Robert V. McGowan, president.

National Council of Senior Citizens:

Danstedt, Rudolph, assistant to president.

Hutton, William R., executive director.

Nationwide Insurance Co.:

Chilcott, Richard G., vice president.

Griffith, Robert W., vice president and casualty actuary.

Ryder System, John Davis, executive vice president.

Texas Trial Lawyers Association, W. James Kronzer, Jr.

Transportation Department:

Baker, Charles D., Assistant Secretary for Policy and International Affairs.

Volpe, Hon. John A., Secretary.

Walsh, Richard F., Deputy Director, Policy and Plans Development.

United Automobile, Aerospace and Agricultural Implement Workers of America—UAW (International Union), Leonard Woodcock, president.

NO-FAULT MOTOR VEHICLE INSURANCE

WEDNESDAY, APRIL 28, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

Our first witness will be Mr. Benjamin Schenk, New York superintendent of insurance.

STATEMENT OF BENJAMIN SCHENK, NEW YORK SUPERINTENDENT OF INSURANCE

Mr. SCHENK. Mr. Chairman, my name is Benjamin Schenk. I am New York State superintendent of insurance, and I appreciate very much this opportunity to place before the House of Representatives the findings and recommendations of New York State's study of automobile insurance.

I would like to describe background developments in New York, to summarize the conclusions of our study, and finally to touch upon the Federal-State questions that have been raised by recent developments at the national level.

In February 1970, the New York State Insurance Department submitted to Governor Rockefeller a report on automobile insurance, entitled "Automobile Insurance * * * For Whose Benefit?" The report, made at the direction of the Governor, dealt with a subject which had been of concern to him for several years.

In autumn 1967, Governor Rockefeller had appointed a distinguished citizens' committee on compensating victims of automobile accidents. The Governor said:

Our present tort liability system for compensating the victims of automobile accidents has been authoritatively criticized as slow, expensive and unfair . . .

The time has come for a thorough study of how automobile victims are affected by the lengthy and difficult process of determining fault and resolving claims following automobile accidents, with a view to possible changes in the system.

The committee organized itself and attempted to go about its work, but at two successive sessions the New York State Legislature failed to appropriate any funds for the payment of staff and other working expenses. As a consequence, in the summer of 1969, the committee reported to the Governor its reluctant conclusion that it had no alternative but to disband.

In acceding to this conclusion, Governor Rockefeller said:

New York State's motoring public is entitled to a fair, equitable and economical system for dealing with the problem of automobile accident claims. I have therefore asked that the project originally assigned to your Committee be transferred to the State Department of Insurance.

The insurance department, under the leadership of my predecessor, Richard E. Stewart, accordingly commenced the intensive study which resulted the following February in our report to the Governor. In its work the department—

Reviewed the large and impressive body of published material on automobile accident reparations, and obtained access to certain unpublished data as well;

Studied the records of the Governor's committee;

Examined claim files;

Conducted new analyses of existing actuarial and statistical data;

Studied responses to its request for comments to all members of the legislature, other community leaders, the insurance industry and the general public; and

Obtained the advice of a panel of leading scholars of accident law and automobile insurance.

On the basis of the recommendations in the report, which I will describe in a moment, Governor Rockefeller submitted to the 1970 session of the State legislature proposed no-fault automobile insurance legislation and a special message urging adoption of the legislation. No action was taken, however, by the legislature in 1970.

Again this year, the Governor has submitted the proposed legislation and has urged its favorable consideration.

I will leave with the committee copies of the report and actuarial supplement. (See p. 339.)

So much for background. Let me highlight the principal conclusions of our study.

The present automobile insurance system, as it operates in New York State today, is a devastating failure.

A system of fault law combined with compulsory liability insurance results in a series of fundamental conceptual contradictions. Fault law says that wrongdoers ought to pay for the damage they do, which sounds fair enough, but then the compulsory insurance law requires everyone to pay insurance premiums to make sure that wrongdoers never pay for the damage they do. We collect money from all car owners and create a substantial pool of funds intended for victims, which sounds quite sensible, but then we distribute the money as if each victim were paid by an individual wrongdoing defendant.

The system is not merely bizarre. It is also unjust and expensive.

The system is unjust in how and when it pays benefits. When the victim is not very seriously hurt he can usually afford to wait, and the insurance company would rather buy him out than argue about it. So victims with slight injuries recover several times their dollar loss. But seriously injured victims often need the money quickly, while the insurance company has every incentive to argue as hard and delay as long as it can. The result is that seriously injured victims wait longer and are paid far less than their dollar loss. These seriously injured victims often wait as much as 4 or 5 years in New York. Many accident victims wait forever, because they get nothing at all.

And while the victims are waiting, the lawyers are arguing. Fault and general damages, the two main theoretical determinants of a victim's recovery, require complex determinations. Complex determinations require expensive personal services—23 percent of bodily injury liability premiums in New York State goes to lawyers and claim adjusters for arguing about how much, if anything, the victim will get. When the costs of operating insurance companies are also considered, we end up with an automobile accident compensation system which pays more to its operators than it pays to victims of automobile accidents.

The failures of the present system, the insurance department's report concluded, are traceable to the conflict in its fundamental structure—to the attempt to run a compensation system in a liability framework. As a consequence, real improvement requires fundamental change.

If we want a system that will compensate victims of automobile accidents fairly, fully, and quickly, but as efficiently as possible, at minimum cost to insurance consumers, then we should design a system which will do just that. It cannot be done by using as building blocks tort law and liability insurance which are designed to serve other purposes. It can be done if we discard case-by-case determinations of a third party's fault as a prerequisite to a victim's recovery, if we eliminate vague and open-ended measures of that recovery, and if we do away with a system in which we require the consumer to buy insurance which will pay benefits to everyone but himself.

That would be done by the proposal which Governor Rockefeller has submitted to the New York Legislature. It would also be done, at least to some extent, by other proposals which are pending before the various State legislatures or here in Washington.

It has been a little more than a year since Governor Rockefeller made his proposals to the New York State Legislature. Since then a number of Members of Congress have submitted proposed legislation for the adoption of a kind of no-fault automobile insurance at the Federal level. Also since then, the Department of Transportation has submitted the final report of its extensive study of automobile accident compensation, as well as a number of excellent research reports on particular aspects of the problem. The final report calls for the adoption of a form of no-fault automobile insurance at the State level.

These proposals add a new dimension to the problem—the question whether State or Federal action is most appropriate. In the hope that it may be helpful to you, let me offer two comments on that question and suggest an alternative approach to the problem.

First, the proponents of automobile insurance reform need to be careful lest the opponents of change manage to use the State-Federal question to obscure the real issue, which is the failure of the present system. In Congress, you hear the argument that Federal action should await the States. At the State level, the argument is turned around; we are told to defer State action because Federal legislation is preferable. Either way the effect, if not the intention, is often delay. But the present automobile insurance system is so bad that the first priority needs to be its fundamental reform, and whether that be accomplished at the State or Federal level is a less important consideration than that it must be accomplished somehow.

But, second, and equally important, in the interest of achieving fundamental reform, I would urge the importance of avoiding the kind of Federal action which would preclude or diminish incentives for independent State action. An automobile accident compensation system enacted by Federal statute would, it is a safe prediction, be a compromise which would stop somewhere short of fundamental reform. Once such a national system were adopted, there would be only one way to change it, by additional Federal legislation. Reform from within a system, and when there is only one way to change it, is the most difficult kind of reform to achieve.

But if, instead of a single national system, each of the States is encouraged to adopt its own system, several desirable things can happen. First, a variety of plans can reflect the variety of conditions and public attitudes in the various parts of the country. Second, a variety of plans will permit experimentation, and will at least give a chance for reform more fundamental than would be included in any national plan. Most important, if States retain the power to change the automobile accident compensation system in the future, the possibilities for further reform are greatly enhanced. There will be two ways to change the system, by State action or Federal action. The possibility of Federal action will be a goad to reform at the State level, and will still be available if State action fails. But once a national system is adopted the chances for further reform are severely limited.

Is there a way to reconcile the need for prompt reform with the undesirability of a uniform national system? How can congressional action be used to hasten reform without sapping the vitality afforded by the federal system? While there are several ways this might be done, the most effective possibility, I would suggest, lies in Federal legislation limited to the abolition of the present system—the abolition of lawsuits based on tort to recover damages for automobile accidents—rather than the adoption of a substitute system. Such Federal legislation would empower and encourage each State to develop a substitute system based on a rational balancing of costs and benefits in light of conditions and attitudes in that State. Such Federal legislation would facilitate rational approaches by uprooting the residual notions of vengeance and deterrence. Such Federal legislation would permit fundamental reform by taking away from the opponents of change the powerful advantage of defending that status quo. Such Federal legislation would preserve the advantages of federalism and would multiply the chance for continuing reform.

Thank you very much. If you have any questions I would be pleased to answer them.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. Sir, are you suggesting that we should abolish the right of a person who is injured to bring a tort claim before we are assured that some substitute is afforded for it in the States?

Mr. SCHENK. I am suggesting that the thrust of Federal legislation ought to be just that; yes.

Now, obviously, this Federal legislation would have a sufficiently deferred effective date so there would be a chance for further congressional action if an appropriate substitute system were not adopted. But I would submit to you, once you folks had done that, had abolished the present system and had taken away from the defenders of that sys-

tem the advantage of their present defensive position, that the existing barriers to State action would disappear, would dissipate. The States would have every incentive, having no present system to preserve, to simply move forward and design a logical, workable, and sensible system that does what we want it to do.

I am not suggesting you would simply do that and retire from the field forever. I would think you would have an effective date and step in if need be. But the thrust of your action. I am suggesting, is to abolish the present system rather than create a new one.

Mr. ECKHARDT. I suppose you would have pressure. I suppose you would have people with missing limbs and people on crutches with no opportunity for medical treatment sitting on the Capitol steps urging the State to give them some remedy.

Don't you think that is a rather cruel means of forcing the legislature in this action, not to the legislature but those who are required—

Mr. SCHENK. Did you understand what I said about a deferred effective date of this Federal legislation? In other words, if you were to act this year, you would say 24 or 18 months hence there should be no causes of action. I am not suggesting you immediately abolish it effective right now.

Mr. ECKHARDT. Then, what if the legislature does nothing?

Mr. SCHENK. Then there would be time for congressional action subsequently to do something and to do it before the present system expired.

Mr. ECKHARDT. Then what you are suggesting is a Federal system which would go in effect if the State did not enact legislation?

Mr. SCHENK. Not necessarily. I am suggesting that if the eventuality you postulate, namely, the States still take no action, then I would suggest that there would always be room for that sort of thing.

I am not saying, I should make clear. I don't have a definitive proposal to present before you. What I am suggesting is that the thrust of what we need from Congress is to do away with the present system, not necessarily to create a substitute. I think that once you do away with the present system, the incentives for developing a sound substitute are all there and one is going to come about.

Mr. ECKHARDT. Well, I don't think we have had a witness yet who said we should do away with the tort system in every case. Do you advocate that we do that?

Mr. SCHENK. Yes.

Mr. ECKHARDT. So you would mandate to the States that they not adopt some choice between say Keeton-O'Connell, the Massachusetts plan, the Puerto Rico plan, or any of those, but every State be required to cover by no-fault insurance and first-party claims every conceivable injury as a result of an automobile accident?

Mr. SCHENK. That would be my recommendation, yes. But I think, as a practical matter, you probably would find some folks who would say that is too fair and you ought to leave room for the States to at least reenact the tort system in some cases. For example, if you took the first sentence of Congressman Halpern's bill, that portion of which abolishes the tort system and just enacted that, that is the kind of thing I am talking about.

What that does is abolish all torts except for catastrophic harm, and if the proposal to abolish tort in toto, were not acceptable, there would be plenty of ways you would tinker with that part of it.

Mr. ECKHARDT. Could you paraphrase that?

Mr. SCHENK. I could cite you to it.

Mr. ECKHARDT. Would you state it?

Mr. SCHENK. If one of you gentlemen has a copy of Congressman Halpern's bill or Senator Hart's bill or your own bill, Congressman Moss' bill, I can find it for you.

Section 4, this is different than the last version I had seen, but it is the basic idea. It seems to me that section 4 of this bill is the key that what we need from Congress.

Now, the rest of the material in the bill, I suggest, we don't need. If we get section 4, we are going to do as well or better than the rest of the bill does at the State level.

Mr. ECKHARDT. So, leaving out the unnecessary sections, it would state, in effect, that no person shall be liable for tort damages of any nature occasioned by injury or death arising out of the ownership, maintenance, operation, or use of a motor vehicle.

Mr. SCHENK. I don't want to vouch for the particular language in this bill. What I am suggesting is that this is the kind of action that we need.

Mr. ECKHARDT. Then, would you add, however, this shall not apply in cases of catastrophic harm?

Mr. SCHENK. I would not add that, but I would expect there would probably be some Congressmen that might.

Mr. ECKHARDT. Would you not add death or injury arising out of criminal conduct?

Mr. SCHENK. Yes.

Mr. ECKHARDT. You would include that?

Mr. SCHENK. Yes.

Mr. ECKHARDT. And you would simply thus mandate to the States that no tort liability arise out of motor vehicle injury.

Now, if you did that, and if the State enacted something like this, and you leave out the catastrophic harm section, and the State adopted the Keeton-O'Connell plan, or the Massachusetts plan, would you say that complied with the Federal act, or would it be in conflict with it?

Mr. SCHENK. It would clearly not be proper. In other words, you fellows have said there can't be any lawsuits, and that doesn't mean Keeton-O'Connell lawsuits or Massachusetts lawsuits, and that would be my recommendation for the most preferable type of action.

Mr. ECKHARDT. Now, if you are going to recommend to the States such a sweeping definition of what can be done, why not draw it up as a piece of Federal legislation?

Mr. SCHENK. For all of the reasons I gave in my testimony, and that so many others have given before you, that while I think everyone agrees the present system is horrendous, there is a wider variety of opinion of what the right placement is; that once you adopt a national system, you are stuck with that one. The chances for experimenting, for playing one idea against another, for changing in the future, are vastly diminished.

The change in the future, I think, is the key to this thing, because once we have a uniform national federal system, then 15 or 20 years later that thing is going to be the institution of the future, the establishment of the future, just like the tort system is today.

Today we have a hard time changing the tort system at the State level because it is the establishment, not in any evil sense, but it is there and it has been working for years. It has interests that are closely intermeshed.

We are lucky to have a Federal alternative where we can come to Washington and there is a place to go. But once you folks have adopted a national system, I suppose the next alternative is the U.N.

Mr. MOSS. Would you yield at that point?

Mr. ECKHARDT. I yield.

Mr. MOSS. Are you seriously urging that we on this committee take away the right of any kind of tort action in connection with an automobile accident; take it away from everyone in this Nation, and then leave them to the uncertain fate of the State legislatures as to the kind of substitute protection that will be afforded? Do you think in all conscience that would be a responsible action by this committee?

Mr. SCHENK. As I indicated in response to the similar question earlier, I don't think the committee should do that and retire from the field.

I think the thrust of the action which the committee should take is, in effect, to do that. I would recommend to you that would be the thrust of the action.

I would also recommend that you would give this action a deferred effective date so it won't take effect for 2 years or more.

Mr. MOSS. Well, let us say it takes effect 2 years from now. Some of the States won't have their legislatures meet again until the second year. Some of them are going to have to amend the constitutions.

Mr. SCHENK. Well, query about amending their constitutions: If the Federal law is superior to a State constitution.

Mr. MOSS. We don't know what you are doing to give us as a substitute. We are just taking away everything and giving nothing here or even requiring that what is done by the States meet any kind of minimal standard.

Mr. SCHENK. Well, I am not——

Mr. MOSS. I think you are asking us to act in a most irresponsible fashion. I couldn't act in that fashion.

Mr. SCHENK. Please, I do want to make clear that I am not suggesting that you take the first section of section 4 and enact it tomorrow.

Mr. MOSS. But substantially, that is what you are suggesting we do. You say take this burden off our backs and then let us fashion the substitute, whatever it might be, and if at some future date you feel we have failed, then you can act to set up your own system.

Mr. SCHENK. I appreciate your problems and I am not asking or suggesting that you relinquish any responsibility or create any situation where State inaction would rebound to the disbenefit of injured citizens, but I am suggesting that the thrust, the thing that people need, that consumers and victims need from Congress is not particularly necessarily any system, but what it needs is the abolition of the present system so that the efforts at the State level do not have to first of all assault the status quo and conquer that. Rather, they can start on a fresh slate to develop a rational system.

Mr. MOSS. Well, let us go back. I think there is a considerable ambiguity in what you are saying. You ask that we, in effect, abolish the

tort system: am I correct on that? And that that action have a future or a delayed or deferred effective date?

MR. SCHENK. Correct.

MR. MOSS. And other than that we do nothing legislatively at this time?

MR. SCHENK. I would not necessarily say that. All I am saying is that the thrust, the main point of what you do should be the abolition of the present system.

MR. MOSS. Would you agree with me that the moment we assume responsibility to insure the motoring public and the nonmotoring public, because their rights are involved too, you have an alternative that will afford protection to them?

MR. SCHENK. Yes, that you would have exercised, put upon yourselves, a continuing responsibility: yes.

MR. MOSS. Shouldn't we do the two things simultaneously?

MR. SCHENK. No, in my judgment.

MR. MOSS. In the Congress we could get a new bill out to do something, but maybe 2 years from now there might be a change in the Congress or in the committee or in public attitudes and we couldn't get a bill out and, yet, we would have sort of a delayed action bomb here that goes into effect with nothing else except just the tort appeal.

MR. SCHENK. Well, I think there are ways around that problem.

MR. MOSS. I would be interested in hearing them. I have only spent 23 years as a legislator, and I don't see the ways around it, if what you say is what you mean. Now, if what you say has not been carefully thought out and you have other nuances of meaning, then I think we might be able to benefit from them at this moment. I am not aware of them.

MR. SCHENK. Well, I think there are two, in response to your last concern, that I would suggest to you: No. 1, aren't there, as you know better than I do, a lot of situations where Congress, in effect, is under a gun where it has to act or dire consequences to the country occur?

MR. MOSS. Well, we have been told there are, and we have also been accused of not acting.

MR. SCHENK. But, you know, to my knowledge, these things come and the job gets done somehow. In other words, I have confidence that if Congress did abolish the present system and did not by the same bill enact a new one, that if there were a need for a substitute, it would be forthcoming.

But the second thing I am suggesting, I want to recommend to you a thrust. Now, that doesn't mean that as a part of the same bill there cannot be a provision that could spring into existence in the event no State took action.

MR. MOSS. Well, let us suppose 15 States took action. What would happen to the other 35?

MR. SCHENK. If you have put on your bill the little tail end that "in the event of no action here is the system," then that system would be in those States that took no action.

MR. MOSS. The question Mr. Eckhardt asked before is modified now. He asked if we shouldn't have the responsibility to go ahead and write an alternative system. You indicated you didn't think so. All you wanted was the tort repealed.

MR. SCHENK. All I want is the tort repealed.

Mr. Moss. But now you feel that perhaps we should, as a matter of precaution or prudence——

Mr. SCHENK. I don't know that I feel that. You expressed a concern, and I think if this concern is a real one, there are ways around it. In other words, I don't come here with a bill that I recommend you pass. What I come here with is a suggestion as to the direction of the kind of action that I would hope that the Congress would take. Obviously, if this committee sees any merit in this thrust, it needs a lot of refinement, a lot of concern.

There are a lot of questions, such as you have asked, that need to be thought about. I think they have answers. I think they can be answered and I think we can handle it in this kind of a framework which is a very good one.

Mr. Moss. I think we would be playing with dynamite. I think I would have us be more prudent in our approach rather than enact a Federal mandate that the tort system go out the window insofar as automobile accident cases are concerned without any other standards, to have it go into effect 2 or even 3 years from now. I can see all sorts of problems from that approach.

Because of coming back to the Congress at that time, we might encounter a long delay and maybe only have 6 months. Where the rights of people in the States, which had failed to act, would be wiped out. I am not willing to accept responsibility for that kind of end result, and I doubt that my colleagues on the committee would.

Mr. SCHENK. I understand that. I suggest if that is a problem, there are ways around it.

Mr. Moss. I think it is a very major problem. I think it is the very basis of responsible action by the Congress as opposed to totally irresponsible action by the Congress.

In one instance, I think we would act responsibly and in the other I think we would be acting outrageously.

Mr. SCHENK. I respect that wish. I think either way you can do what I think needs to be done.

Mr. Moss. I think the gentleman has yielded.

Mr. ECKHARDT. Let me ask you this question: I am going to use a hypothetical case, and I will call it the "State of Euphoria." Suppose the State of Euphoria under such pressure from the Federal Government, the Congress having abolished tort liability by Federal legislation, comes in with its substitute which constitutes a limited liability of \$1,500 for any automobile accident, no more compensation, and establishes a limitation of 6 months with respect to permanent-partial disability. Now, the State has met the Federal standard. The law is not in conflict with the Federal law which abolishes tort liability. So in the State of Euphoria a person gets the magnificent sum of \$1,500 for the injury and is protected for a period of 6 months. The Federal Government is not taking the responsibility of creating no-fault insurance, so the State is completely protected in this area, and anyone injured and who would previously have had a tort claim loses his tort claim.

Now, do you think that is responsible action on the part of the Federal Government?

Mr. SCHENK. Well, let me ask a question. Could, in the State of Euphoria, a guy buy more insurance if we wanted it?

Mr. ECKHARDT. Sure.

Mr. SCHENK. So, therefore, he is not limited to \$1,500 and we have said to him you can buy as much more as you like.

Mr. ECKHARDT. Suppose he is a pedestrian that is hit by an automobile. Is he covered by your waiving of tort liability?

Mr. SCHENK. Yes.

Mr. ECKHARDT. And unless he buys insurance, he has no claim no matter how negligent the party who struck him and no matter how extreme the situation?

Mr. SCHENK. And on the assumption that I have allowed such a State law to come into existence, you are quite right.

Mr. ECKHARDT. What you are saying is that unless a man buys insurance, he has no protection against the torts of others if an automobile is involved. Do you believe that such a law would be a good one?

Mr. SCHENK. No, I didn't ever say that.

Mr. ECKHARDT. Tell me how you didn't say it? Tell me in what respect I am misquoting you?

Mr. SCHENK. Even if we assume—and this goes to the heart of what I am saying—that the Federal abolition law takes effect without standards or without review power, without a substitute system, in the event that State action doesn't meet certain standards, in the event, in other words, that you just passed this law and then retire from the field altogether; what I am saying is that at that point the incentives for the State to do a decent job are all there.

There is no reason why a State would say to pedestrians that if you are injured all you can have is \$1,500. In the State legislatures, at the State level—

Mr. ECKHARDT. Mr. Schenk, have you had any experience with State legislatures and with the insurance lobby?

Mr. SCHENK. Yes.

Mr. ECKHARDT. Only in New York?

Mr. SCHENK. Yes, only in New York.

Mr. ECKHARDT. Do you not find the insurance lobby a rather powerful influence in the State of New York?

Mr. SCHENK. They do all right.

Mr. ECKHARDT. I have had some experience in the State of Texas, and I find that they are rather strong. I think it is entirely conceivable that in some of the 50 States in the Union their decision could be absolutely dominant if you federally prohibited tort liability.

Now, you take these various poll returns which indicate that only about 20 percent of the people even know what no-fault insurance is all about, and then you let an intelligent and effective lobby work on a State legislature where you have denied tort liability by Federal law; I am telling you, you will do grave injustices to persons who are injured in many States.

Mr. SCHENK. Who has an incentive to see to it that the pedestrian can only recover \$1,500. I think the insurance lobby would say the more insurance the merrier and we want them to have a million dollars.

Mr. ECKHARDT. I think under your suggestion there would be a great deal of insurance because you couldn't recover anything unless you were insured.

Mr. SCHENK. Right.

Mr. ECKHARDT. Your proposal is that the person against whom a tort is committed cannot possibly recover under any circumstances unless he is insured. I would consider that a highly desirable situation for the insurance lobby.

Mr. SCHENK. As a practical matter, of course, that is the situation today. A person who is injured can't recover unless somebody is insured. Only today it is whether the other guy is insured. That is the absurdity.

I would have it be that if he was injured.

Mr. ECKHARDT. You are suggesting that no one is responsive in damages, unless he is insured, which I don't think is true, particularly in cases of small claims.

Mr. SCHENK. Yes; I think the fact is that in New York, at least, as far as individual defendants are concerned, the case where a fellow ever pays anything out of his own pocket is just about nonexistent.

Mr. ECKHARDT. That is because they are all insured, isn't it?

Mr. SCHENK. They are required to have insurance; yes.

Mr. ECKHARDT. According to your theory, why not apply it to all tort liabilities? Why limit it to automobiles? Why not say that anybody who is put upon or injured by the negligence or fault of another, shall not recover anything unless he is insured, and then it shall be on the basis of no-fault? Do you recommend that?

Mr. SCHENK. No, I don't. I think there is a very clear reason. Again, I am really speaking of the background of New York State rather than the rest of the country. In New York State a long time ago it was considered by judgment of the legislature and the people of New York that were victims of the automobile accidents ought to be compensated. There was a class of accidents that we looked at and said there should be compensation here. They are so frequent, they are so massive and involve so many people that we have a responsibility to step in and establish a compensation decision.

It was the same kind of decision that was made with industrial accidents 50 years ago. We have made it with automobile accidents now.

What I am saying is that once you have a decision and it is a public purpose to see to it that the victims of certain kinds of accidents are compensated, then I think it is ridiculous to try to do it with liability insurance, which is what we have done and everybody has done.

If this were a matter of national public policy, that all of the victims of all kinds of accidents ought to be compensated for their losses, then I would say: "Yes, don't do it by tort, for goodness sakes."

Mr. ECKHARDT. Well, I still refer you to the Occupational Safety and Health Act of 1970 report of the Senate on the bill in which at page 23 the Senate studies the responsiveness of the States with respect to workmen's compensation. It is stated here:

Testimony received by the committee as well as other information available for the committee, raises serious questions about the present inadequacy of many State workmen's compensation laws.

Then it sets down the varying coverage and some of the coverage here is pitifully low.

Of course, tort liability is removed in most of those States, but certainly not by Federal action.

On page 24, the report states more generally :

Although for many years the U.S. Department of Labor and International Association of Industrial Accident Boards' Commission have published recommended standards for State laws, the overall ratio for compliance of such standards today is less than 50 percent. Similarly, a model workmen's compensation law, even developed under the auspices of Council of State Governments, appears to be largely ignored.

I submit to you from my experience, if you remove the understood tort liability in most States, and, therefore, of course, remove the pressures of at least one group concerned with recovery, that is, the lawyers, you leave that State and the determination of the method of compensation to the tender mercies of the insurance companies, and I am certainly not willing to do that. I am not willing to act here at the Federal level to create a stage in which State legislatures are acted on by only one lobby force in establishing the standard of liability in automobile accident cases.

I feel that this would be the most irresponsible move that we could make. It would be like a revolution that tears down a government and doesn't create one in its place and leaves the question of the replacement of the government to one faction.

I reject that out of hand.

MR. SCHENK. Well, I obviously, don't agree with you that the insurance faction is the only faction that would be interested. I think all of the union factions, and all the consumer groups and all automobile owners are concerned about this area. Today they are trying to get a no-fault system adopted.

MR. ECKHARDT. If I may interrupt a moment, the persons with the long memories and intense interest frequently succeed over those with broader interest and perhaps the less intense and organized pressure on a legislature. I think you are simply misconceiving the forces that act in State legislatures when you suggest this extremely radical plan.

MR. SCHENK. Well, what I conceive are forces acting in State legislatures today are those opposed to changing this tort liability system, which takes 23 percent of its revenue and gives it to people with arguing about fault. It is difficult to change that system from within. I think we need help in changing. I think we need help from Congress in changing.

MR. ECKHARDT. Well, then Congress ought to write a bill that is responsible.

MR. SCHENK. My suggestion would be that if you folks can help us abolish the present system, then I think there are plenty of ways to have variety and experimentation and nonuniformity and the chance to learn and to grow, short of having a uniform national substitute system; and if the concern that you express and the chairman expresses, which I understand and appreciate, I think there are ways to handle that concern without going so far as to adopt a uniform Federal plan.

MR. ECKHARDT. Thank you.

MR. MOSS. Mr. Broyhill?

MR. BROYHILL. No questions.

MR. MOSS. Mr. Stuckey?

MR. STUCKEY. No questions.

MR. MOSS. Mr. Ware?

MR. WARE. No questions.

MR. MOSS. Mr. Carney?

Mr. CARNEY. I am interested in getting one answer from this gentleman. You claim that the Governor of New York in 1967 appointed a committee of prominent citizens to come up with very strong recommendations, and then the New York Legislature didn't do anything about it. Consequently, the Governor appointed a committee under your department and you had experts and they made recommendations, but the State legislature did nothing about it. Then you point out in your report in two cases that the New York State insurance system is a "devastating failure," to quote your own words. Why do you think we should pass a law that assumes that the State legislature will suddenly get responsive to the needs of the public?

Mr. SCHENK. Because it would be at that point impossible to preserve the present system. The incentives that would be working would be the decent incentive, the desire for everybody to have insurance costs as reasonable as possible and to have victims as fairly compensated as possible. Those would be the two pressures that would shape the action. The pressure to preserve the present system would have been taken care of by you gentlemen.

Mr. CARNEY. You recommend, No. 1, that we abolish the tort system and leave it up to the States. Then the States, in their wisdom, will adopt a variety of plans. If they didn't adopt those plans, then what would happen?

Mr. SCHENK. Well, as I answered in response to earlier questions, what I am suggesting is the thrust, the purpose, the basic approach of the kind of Federal legislation I would like to see. I am not suggesting that the Congress abdicate responsibility in this area once it abolished the present system, and I think to the extent there is a legitimate concern and fear that States would not take action, there are various ways to guard against that and to make sure that disaster would not come about; that in all events the Congress' responsibility would be exercised.

Mr. CARNEY. Are you saying that if the esteemed Governor Rockefeller, who has been a four-term Governor of New York, and most of the time with a legislature of his party, and all of these esteemed citizens recommend it, and your department, which seems to be very efficient, had experts and they have recommended all of these things to the New York Legislature, and we pass a bill on a Federal level which abdicates our responsibility to the public, that suddenly the New York Legislature and other legislatures are going to become responsive to the needs of the people? Is that what you are saying?

Mr. SCHENK. No.

Mr. CARNEY. That is what I read in this.

Mr. SCHENK. Well, I can go through this again, if you like.

Mr. CARNEY. I have read it twice, and you said the New York system is a catastrophic failure in two sections.

Mr. SCHENK. Right.

Mr. CARNEY. Well, then I think you ought to spend your time taking care of New York.

Mr. SCHENK. I agree with that, and that is why I am not down here urging you folks to adopt a national substitute.

Mr. CARNEY. I think you ought to go back there and get to work on these committee reports and spend your time there.

Mr. Moss. Mr. McCollister?

Mr. McCOLLISTER. I would like to compliment Mr. Schenk on his testimony favoring the State approach, although not agreeing in every detail that you have advanced. I am grateful for your testimony.

Mr. SCHENK. Thank you, sir.

Mr. Moss. Mr. Schenk. I want to express the appreciation of the committee for your appearance here. While we have obviously areas of disagreement, I think the testimony is helpful to us. Certainly, I know of no material available to the committee that is, in my judgment, more constructive in its approach to this whole problem than the report made by the Department of Insurance of the State of New York under the guidance of your predecessor, Richard Stewart. I think it is in every sense a landmark report. I commend it to anyone, and congratulate your Governor and your predecessor and, of course, you, yourself, because you played an active role. It is material of great value, and I thank you.

Mr. SCHENK. Thank you, Mr. Chairman.

Mr. Moss. I believe that you had an appendix of cost data.

Mr. SCHENK. We will leave that with Mr. Guthrie.

Mr. Moss. At this point the Chair would like to have unanimous consent to place in the record immediately following the statement of Mr. Schenk the appendix on cost data which he has provided for the committee. I thank you for that also. It is material widely sought by members of the committee.

(The report and appendix referred to follow :)

State of New York
Insurance Department

AUTOMOBILE INSURANCE ...FOR WHOSE BENEFIT?

A Report to
Governor Nelson A. Rockefeller



1970



STATE OF NEW YORK
INSURANCE DEPARTMENT
123 WILLIAM STREET
NEW YORK 10038

Richard E. Stewart
Superintendent of Insurance

February 12, 1970

THE HONORABLE NELSON A. ROCKEFELLER
Governor of the State of New York
Executive Chamber
Albany, New York

DEAR GOVERNOR ROCKEFELLER:

In the autumn of 1967 you appointed a Governor's Committee on Compensating Victims of Automobile Accidents. You said:

"Our present tort liability system for compensating the victims of automobile accidents has been authoritatively criticized as slow, expensive and unfair. The system has remained essentially unchanged while the nation has passed from the horse and buggy era to an age dominated by the automobile — with the highway accident an all-too-common occurrence.

"The time has come for a thorough study of how automobile victims are affected by the lengthy and difficult process of determining fault and resolving claims following automobile accidents, with a view to possible changes in the system."

You appointed as Chairman of that Committee a distinguished former Judge of the New York State Court of Appeals, John VanVoorhis.

Your Executive Budget for fiscal 1968-69 requested a \$300,000 appropriation for staff and other working expenses of the Committee, but no funds were appropriated.

The Committee had in the meantime organized itself, engaged a small staff and begun taking testimony from authorities in the various fields concerned with automobile accidents and the compensation of their victims. With the beginning of the new fiscal year in April 1968, however, the Committee had to suspend operations.

Again in 1969 no funds were made available and so last summer the Committee met for the last time and unanimously concluded that it had no alternative but to disband. On September 17, 1969, Judge VanVoorhis wrote to you, reporting the Committee's decision and expressing the Committee's hope that the work it had begun might in some way be carried on. After reviewing the problems which the Committee had perceived in the present system of compensating victims of automobile accidents, the Judge concluded:

"A substantial majority of the Committee members desire it to be said, however, that they do not believe that these problems can be solved by temporizing or by any measure short of an overhaul of the existing system."

In your September 26 reply to Judge VanVoorhis, you said:

"New York State's motoring public is entitled to a fair, equitable and economical system for dealing with the problem of automobile accident claims. I have therefore asked that the project originally assigned to your Committee be transferred to the State Department of Insurance. I have asked that Superintendent Stewart and his staff, using available materials, continue the work which was started by your Committee with a view to providing a final report as close to the first of the year as possible."

Immediately upon receiving your request, the Insurance Department began what has been the most difficult and demanding, and we hope the most useful, of its special projects since I have been in the Department.

For a time we expected only to be able to review the available materials and possibly to pull them together in a constructive way. But we had a number of resources that have enabled us to go further.

First of all, the literature on the legal and insurance aspects of automobile accidents is excellent and far more complete than that in other areas of insurance. It was supplemented by the files which your Committee turned over to us, and by many thoughtful replies to a request

for comments which we sent on October 29 to several hundred government, consumer, labor, legal and insurance organizations and individual leaders, and to a similar published request for comments from the general public.

Then we had the considerable resources of the New York Insurance Department, with its hundreds of examiners, actuaries, statisticians and lawyers, public servants of high competence, having among them immense knowledge of the insurance business and its regulation and long experience at evaluating information from and about the insurance business. These resources were supplemented by the statistical and other information and helpful suggestions which were made available to us by the expert and most cooperative staff of the Automobile Insurance and Compensation Study of the United States Department of Transportation, and by other agencies concerned with traffic safety, health care and consumer protection.

Finally, we were able to secure, without payment and due solely to their generosity and public spirit, the priceless assistance of several of the world's leading scholars of accident law, automobile insurance and insurance regulation.

The attached report was prepared in the following way. The research and drafting were done by a group of four — Aaron Trupin, the Department's Director of Research and Statistics, Stanley Dorf, our Supervising Casualty Actuary, Abraham Blech of our Office of General Counsel, and me. Working closely with these three exceptional men was, for me, one of the great pleasures of this project.

Our drafts were reviewed, within the Department, by First Deputy Superintendent Benjamin R. Schenck and Deputy Superintendents Theodore R. Ayervais, Jacob B. Underhill, Alexander E. Fox, Malcolm MacKay and Robert J. Bertrand; by Assistant Superintendent William C. Gould, Chief of the Property Bureau; Frank Harwayne, Chief of the Casualty Actuarial Bureau and a leading authority on the cost of accident compensation systems; Solomon Bendet, Chief of the Complaint Bureau; Max J. Schwartz, Chief of the Accident and Health Rates Section; Milton Freedman and Henry Katz of the Office of General Counsel, and Robert E. Mackin, Executive Assistant. In the research and production aspects of the report, we were especially helped by First Deputy Superintendent Schenck, by Administrative Officer Donald R. Bruce, by Associate Casualty Actuary Martin Feldman, by Gerald Dolman and Stanley Hamburger of our Office of General Counsel, by Winston Dancis of our Bureau of Research and Statistics and by Matilda Mitchley, Carolyn Bruckner and Sarah Stewart.

Finally, it was our special good fortune that drafts of this report were reviewed by Robert E. Keeton, Professor of Law at Harvard; Spencer L. Kimball, Dean of the University of Wisconsin Law School

and Director of the Wisconsin Insurance Laws Revision Committee; Guido Calabresi, Professor of Law at Yale; Richard S. L. Roddis, Professor of Law at the University of Washington and former Insurance Commissioner of the State of California; Anthony M. Honoré, Fellow of New College, Oxford; A. W. B. Simpson, Dean of the Faculty of Laws, University of Ghana; and Leonard H. Hoffmann, Fellow of University College, Oxford. These men need no introduction to readers of the best of legal and insurance scholarship. That men of their attainments would give so much of their time to such careful review and criticism of the drafts of the report, is the best testimony to the importance of action on the subject by the State of New York.

To acknowledge the help we received from so many eminent sources is not, of course, to imply that they agree with all our conclusions or to implicate them in our mistakes. But we are most grateful.

Throughout the project you and your Counsel, Robert R. Douglass, have given us steady encouragement and support, and complete freedom to follow our inquiry wherever it led and to report it just the way it looked to us. Considering the heat surrounding the subject of automobile insurance, and particularly the heat sure to be generated by some of the analyses, conclusions and recommendations in this report, that freedom and encouragement were no small contribution.

Thank you for giving us, especially the four of us in the drafting group, one of those rare chances to step for a moment outside a system of which we are a part, and to wonder about it.

Respectfully submitted,

Richard E. Stewart

Superintendent of Insurance

One must lie low, no matter how much it went against the grain. Must try to understand that this great organization remained, so to speak, in a state of delicate balance, and that if someone took it upon himself to alter the disposition of things around him, he ran the risk of losing his footing and falling to destruction, while the organization would simply right itself by some compensating reaction in another part of its machinery — since everything interlocked — and remain unchanged, unless, indeed, which was very probable, it became still more rigid, more vigilant, more severe, and more ruthless.

FRANZ KAFKA
The Trial

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INTRODUCTION

In America today, there is no escape from the automobile. Four out of every five families own a car.¹ Everywhere it is a dominant mode of transportation; in many places it is just about the only one.²

The automobile does damage on a similarly grand scale.³ Last year in this country traffic accidents killed 56,000 people, injured 4.6 million others and cost \$16.5 billion.⁴

A typical driver has a better than even chance of having an accident every three years; just about every driver will have an accident sometime.⁵

1. AUTOMOBILE MANUFACTURERS ASS'N, AUTOMOBILE FACTS AND FIGURES 1 (1969). In New York State there are 5.6 million private and 750,000 commercial vehicles. 1968 N.Y.S. MOT. VEHIC. DEPT. ANN. REP. 29.

2. See N.Y.S. TRANSP. DEPT., POLICIES AND PLANS FOR TRANSPORTATION IN NEW YORK STATE 17, 55 (1968).

3. "At the present moment, automobile injuries alone occur at a rate of 10,000 per day. This is 50 or more times the casualty rate of the war in Vietnam. . . . Accidental death and disability indeed, became, in the words of the National Academy of Sciences, 'the neglected disease of modern society'."

U.S. DEPT. OF HEALTH, EDUCATION AND WELFARE, REPORT OF THE SECRETARY'S ADVISORY COMMITTEE ON TRAFFIC SAFETY 4 (1968). See also Price, *The Public Health Service Views Auto Safety*, 119 J. LOUISIANA STATE MED. SOC. 355 (1967); NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 8 (1969).

4. Projected figures for the full year 1969. INSURANCE INFORMATION INSTITUTE, *News Release*, Dec. 18, 1969. For the 1968 data, see INSURANCE INFORMATION INSTITUTE, INSURANCE FACTS 55, 57 (1969); NATIONAL SAFETY COUNCIL, *supra* note 3, at 5, 54.

5. From the statistics in sources cited at note 4 *supra*, New York Insurance Department actuaries have calculated the probabilities of an average driver's having an accident over various periods of time (the figures include minor as well as serious accidents, but do not count involvement as a passenger or a pedestrian and are further reduced to allow for accident repeaters) as follows:

<i>Years of Exposure</i>	<i>Estimated Percent of Drivers Involved in at Least One Motor Vehicle Accident</i>
1 year	24%
3 years	56
5 years	75
10 years	94
20 years	99+

In short, traffic accidents no longer just happen to somebody else.⁶ We are all prospective accident victims. Most of us are also premium payers. Automobile accident costs are everyone's concern.

Today some of the costs of automobile accidents are transferred from the victim to others and some of those costs are not transferred at all but are borne by the victim. This Report will examine present ways of transferring, or not transferring, those costs. Which accident victims get paid, and when and how much? Which victims do not get paid, and why? Who pays, and how much?

When we ignore an accident cost, we do not make it go away. We just leave it on the person on whom it first fell. We can shift accident costs, wholly or partly or not at all, and we can shift them in any number of directions. This Report will examine other ways of transferring, or not transferring, those costs. Which victims should get paid, and when and how much? Who should pay, and how much?

Today some of the costs of automobile accidents are covered by insurance. This year New Yorkers will pay some \$959 million for automobile liability insurance.⁷

This Report will trace that \$959 million of the people's money. To whom does it go, and when and why? For whose benefit are the people paying their \$959 million in insurance premiums?

6. "Safety experts have concluded that automobile accidents have become so wide-spread that virtually every family can expect to experience personally the tragedy of automobile inflicted death or injury."

J. APONTE & H. DENENBERG, PUERTO RICO'S SOCIAL PROTECTION PLAN 33 (1969).

7. Premiums for automobile bodily injury liability and property damage liability insurance, projected for 1970 by New York Insurance Department statisticians. Bodily injury liability insurance premiums account for some \$686 million; property damage liability insurance for some \$269 million; and miscellaneous liability coverages for \$4 million. Including the cost of automobile physical damage coverages (which are not liability coverages, but are first-party coverages of (i) collision and (ii) fire, theft and comprehensive), the projected 1970 premiums for all kinds of automobile insurance are \$1.4 billion.

THE PRESENT SYSTEM IN THEORY

The cornerstone of the present way of handling the personal injury and property damage costs of automobile accidents is fault law which, when combined with insurance indemnifying against liability for fault, becomes what we will call the fault insurance system.

Fault law is a collection of rules for determining, as between two or more individuals, who will bear the cost of an accident. The determinations are made on a case-by-case basis, with the cost being shifted from the individual on whom it fell only if some other individual can be shown to have been exclusively at fault. The legal standard for fault is based on what a hypothetical reasonable man would have done under the circumstances of the accident.⁸

For traffic cases—where a moving thing ran into something else—the fundamental principles of fault law developed before the automobile was even invented and long before it assumed its modern role in transportation.⁹

Around the turn of the century, automobiles appeared and began to collide. Fault law, the established law of traffic cases, became the law of automobile traffic cases.¹⁰

When motorists faced the risk of being held financially liable for automobile accidents, they sought to insure against that risk. Insurance companies began to offer an indemnity policy, at first just as an extension of the indemnities they

8. See 2 F. HARPER & F. JAMES, *THE LAW OF TORTS* Chs. XII, XVI, XXVI (1956); O. HOLMES, *THE COMMON LAW* 107-16 (1881); W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* Chs. 5, 12 (3rd ed. 1964).

9. See L. GREEN, *TRAFFIC VICTIMS: TORT LAW AND INSURANCE* 9-17 (1958); 2 F. HARPER & F. JAMES, *supra* note 8, Ch. XII; 8 W. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 446-82 (2d ed. 1937); T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 428-53 (4th ed. rev. 1948); W. PROSSER, *supra* note 8, at 28-29.

10. See L. GREEN, *supra* note 9, at 63-65; James, *History of the Law Governing Recovery in Automobile Accident Cases*, 14 U. FLA. L. REV. 321, 323 (1962).

wrote for other fault liability situations. Under the new automobile insurance, the insurance company undertook to defend its policyholder against suits based on fault law, and further undertook, in the event fault was established, to pay the damages up to the policy limits.¹¹

Liability insurance brought insurance to the rescue of the wrongdoer. As will be seen later in this Report, pressure has been growing to bring insurance to the rescue of the victim as well, and to measure the fault insurance system by how well it compensates the victims of automobile accidents.

Fault law determines whether the fault insurance system pays or not. Fault law theory is based on the principle that these determinations should turn on the conduct at the moment of the accident of the individuals involved in the accident.¹² It ignores insurance and other economic realities, and frames its key questions as though what were being decided were whether the loss should rest with the victim or whether instead the loss should be shifted to another single individual and then should rest with him. In an automobile accident case today, what is really being decided is whether the loss

11. See C. BRAINARD, *AUTOMOBILE INSURANCE* 132-33 (1961); C. CROBAUGH & A. REDDING, *CASUALTY INSURANCE* 286-90 (1928); 2 F. HARPER & F. JAMES, *supra* note 8, §13.3; C. KULP & J. HALL, *CASUALTY INSURANCE* Ch. 10 (4th ed. 1968); Kimball, *Insurance and the Evolution of Public Policy*, 15 *ANNALS OF SOC'Y OF C.P.C.U.* 127, 131-33 (1962).

A standard provision of the Family Automobile Form, used by most insurance companies, states:

"The company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy."

12. Specifically, the determination turns on comparing what the participants did at the time of the accident with what a hypothetical reasonable man might have done, and then on connecting their acts with "foreseeable" damages. Both in determining fault and in determining the causal relationship between a particular negligent act and a particular injury, therefore, fault law is led into a focus on extraordinary incidents and into some highly abstruse reasoning. See, e.g., *Davies v. Mann*, 10 M. & W. 546, 152 Eng. Rep. 588 (Ex. 1842) and the ensuing literature on "last clear chance;" H. HART & A. HONORÉ, *CAUSATION IN THE LAW* 143-44, 195, 201-07 (1959).

of a particular victim should be taken out of the great pool of automobile insurance premiums paid by a multitude of people who had no connection with the accident at all. But the principles of fault law preclude us from thinking about it that way.

The principles of the fault insurance system make it precipitate for decision the wrong issues—wrong because they are formal, anachronistic issues completely out of touch with the effects of the decisions they call for, and wrong because they necessarily involve a decision-making process that is at once utterly unreal and terribly complex. This fixation on the wrong issues gives rise to the following inherent qualities of the fault insurance system.

Denial of Compensation to Some Victims

Fault law shifts loss only if a negligent third party can be found, and then only if the claimant himself was without fault. Liability insurance pays only for those losses that are shifted. Part of the basic design of the fault insurance system is to leave some accident victims without compensation.

When the fault insurance system does not pay, the loss remains where it first fell—on the victim. It can happen to an accident victim who was himself only slightly at fault, for the defense of contributory negligence bars recovery completely.¹³ But it can also happen to a victim who was, even by the standards of fault law, quite innocent of any blame

13. The rule of contributory negligence, *i.e.*, that the plaintiff cannot recover damages if his own negligence also contributed to the accident, obtains in New York. For discussions of the rule, *see* 2 F. HARPER & F. JAMES, *supra* note 8, Ch. XXII; W. PROSSER, *supra* note 8, at 426-37. In several states the common law doctrine of contributory negligence has been abrogated and replaced by a rule which provides, in various ways, for the plaintiff in such cases to recover a portion of his damages, the proportion to depend on a comparison of the degrees of fault of the plaintiff and defendant—the doctrine of “comparative negligence”. *See* 2 F. HARPER & F. JAMES, *supra* note 8, §22.1-22.3, 22.11; W. PROSSER, *supra* note 8, at 443-49. For the usefulness of changing to a comparative negligence rule in this State, *see* pp. 52-53 *infra*.

for the accident. Here we find the victim of any accident where no one's fault can be proved.

How many victims are left out by the fault insurance system will be discussed below in connection with the practical working of the system. The point here is that the system is intended to leave some victims out.¹⁴

Delay

The fault insurance system, in theory, transfers costs only after a case-by-case determination pursuant to complex legal rules.¹⁵

There are obvious limitations on how fast a complex determination can be made with any degree of competence. A corollary is that any system that makes those determinations one at a time can handle only a certain number on a current basis.

Accordingly, under the fault insurance system there must be a significant time interval between an accident and the transfer, if any, of the accident costs. And such a system will be prone to break down under a heavy caseload.

How great or small the intervals and overloads are will be discussed below in connection with the practical working of the system.¹⁶ For present purposes, it is enough to note that delay and susceptibility to overloading are inherent in the system.

14. "The [automobile] casualty insurance contract is an indemnification contract, not a reparation contract." Koskoff (Nat'l Sec'y of the American Trial Lawyers Ass'n), *The Compromise that Fails*, TRIAL, Apr.-May 1969, at 28. For a discussion of how many victims are excluded, see p. 18 *infra*.

15. See, e.g., *Tedla v. Ellman*, 280 N.Y. 124, 19 N.E. 2d 987 (1939); *Galbraith v. Busch*, 267 N.Y. 230, 196 N.E. 36 (1935); *Palsgraf v. Long Island R.R.*, 248 N.Y. 339, 162 N.E. 99 (1928); *U.S. v. Carroll Towing Co.*, 169 F. 2d 169 (2d Cir. 1947).

16. See pp. 19-22 *infra*.

Inefficiency

Similarly, the fault insurance system is inherently expensive to operate.

The system allocates costs and benefits one case at a time, applying complicated legal rules to complicated fact situations, and distributes the costs over large numbers of policyholders. All this requires personal service and a lot of it.

These services are not cheap. The fault insurance system has to have a great deal of money just to run on. These operating expenses are known as frictional or transaction costs.¹⁷ They use up premium dollars on the way from insurance consumers to accident victims.

How great or small the transaction costs of the fault insurance system actually are will be discussed below in connection with the practical working of the system.¹⁸ But even by contemplating the system in the abstract, we can see that those costs will have to be substantial.

Blind Allocation of Resources

Its fixation with private relationships and individual acts precludes the fault insurance system from considering the economic and social effects of its own massive reallocation of resources.

The system interferes with rational economic choice among competing modes of transportation. For the way automobile accident costs are allocated as among the motoring public, the general public and accident victims will affect both the total price of driving and how clearly we perceive the total price of driving.

17. For the fault insurance system, these frictional or transaction costs include such items as insurance company expenses (*e.g.*, home office administration expense; acquisition expense, including commissions; loss adjustment expense, including legal defense and investigation; and taxes and profit) and the legal expenses of claimants. Part of what is spent on the courts and police might also properly be counted as a frictional cost of the fault insurance system but we have not added it to the totals used in this Report.

18. See pp. 34-37 *infra*.

Even as among motorists, the system's focus on individual cases distracts us from how the cost of accidents is allocated among categories of motorists and among age, economic and social groups in the community.¹⁹

As far as rational allocation of costs and resources is concerned, the principles of the fault insurance system not only fail to lead to the right answers. They keep us from asking the right questions.

Mythical Approach to Traffic Safety

Similarly, by confining attention to the last-minute acts of the individuals directly involved and by making believe that losses remain on the individual to whom they are first shifted, the fault insurance system tends to divert government, the automobile industry, the insurance industry and others from pursuing more systematic approaches to highway safety.

Its mythology notwithstanding, the fault insurance system is inherently incapable of deterring unsafe driving. Individual, last-moment driver mistakes—undeterred by fear of death, injury, imprisonment, fine or loss of license—surely cannot be deterred by fear of civil liability against which one is insured.²⁰ Indeed, as a matter of logic, the contrary is true.

19. See G. CALABRESI, *THE COSTS OF ACCIDENTS* (1970).

20. In New York State, where automobile liability insurance has been compulsory since 1957, it is estimated that over 99% of the registered vehicles have the prescribed liability insurance. Letter from N.Y.S. Mot. Vehic. Dept. to N.Y.S. Ins. Dept., Sept. 29, 1969. On the absurdity of insured civil liability as a deterrent to unsafe driving, see, e.g., R. KEETON, *COMPENSATION SYSTEMS: THE SEARCH FOR A VIABLE ALTERNATIVE TO NEGLIGENCE LAW* 43-44 (1969 SUPPLEMENT TO SEAVEY, KEETON AND KEETON'S CASES AND MATERIALS ON TORTS (2d ed. 1964) AND TO KEETON'S BASIC INSURANCE LAW (1960)) (hereinafter cited as KEETON, *COMPENSATION SYSTEMS*); Calabresi, *The Decision for Accidents: An Approach to Non-fault Allocation of Costs*, 78 HARV. L. REV. 713, 719-20 (1965); Calabresi, *Does the Fault System Optimally Control Primary Accident Costs?*, 33 LAW & CONTEMP. PROB. 429, 441-44 (1968); James, *An Evaluation of the Fault Concept*, 32 TENN. L. REV. 394, 397 (1964-65); Kimball, *Automobile Accident Compensation Systems—Objectives and Perspectives*, 1967 U. ILL. L. FOR. 370, 373-74. The point is elaborated in note 96 *infra*. Beyond the question whether last-moment driver mistakes can be deterred, some of the most advanced recent thinking about

The careless driver is protected by insurance, while his victim can be left with much of the cost that originally fell upon him. We confront the bizarre conclusion that if the fault insurance system is a deterrent to anything, it is more of a "deterrent" to becoming a victim than to driving carelessly.

Some answers will be ventured later as to the relationship between an automobile insurance system and systematic approaches to reducing and distributing the cost of automobile accidents.²¹ But it is appropriate to note here that the very principles of the fault insurance system lure us toward a view of traffic safety that is a mirage.

Conclusion

The law of fault liability and insurance against fault liability, which have drifted together to form what, for convenience, we have called the "fault insurance system," began with very different purposes.

Fault law, in theory, shifts accident costs to wrongdoers. Liability insurance, in theory, protects wrongdoers both by

highway safety has moved away from the "last-moment driver mistake" as a central safety concept at all, and has concentrated on traffic accidents as results of the way the whole traffic system is set up, rather than on individual acts. For example, the senior staff member of Arthur D. Little, Inc., who has contributed to several traffic safety studies, has said:

"An accident occurs when the system fails due to a stress that exceeds the system's ability to withstand it. Safety, in short, is concerned with the pathology of systems.

"The particular pathology that leads to traffic accidents has recently begun to attract considerable public attention. There is growing recognition of the complexity of the traffic problem and its many-sided nature. It has become widely appreciated in recent years that automobile accidents are basically failures of a system and that it is meaningless to speak of simple causes of vehicle accidents."

Boodman, *Safety and Systems Analysis, with Applications to Traffic Safety*, 33 LAW & CONTEMP. PROB. 488, 489 (1968). See also Haddon, *Informal Comments on Highway Safety*, in TRAFFIC SAFETY: STRATEGIES FOR RESEARCH AND ACTION 86-97 (1968). Finally, even if there were no insurance, fault law would be a most capricious "deterrent" to bad driving, for it is no part of the theory of fault law to make damages proportional to the degree of fault.

21. See pp. 71-73, 118-20 *infra*.

defense and by indemnity. The two original purposes are in fundamental conflict. Liability insurance has stripped fault law of its purpose, but society is left to pay for and endure all the complexities of fault law decision-making.²²

The emergence of the third expectation about the fault insurance system—that it compensate victims—simply heightens the tension among the purposes of the fault insurance system.

Pulled in three different directions by three compelling, powerful and conflicting theories, the fault insurance system, even in principle, is in constant danger of being torn apart.

These being the principles, what happens to this “system” in practice?

22. Two of the many descriptions of this situation are so apt as to be worth quoting at length:

“But the principles of negligence law were developed in the days before automobiles were invented and are in basic conflict with the essential principles of insurance. Either automobile liability insurance or negligence law by itself might be defended as reasonable; but today’s combination of the two produces results which are so unjust, so capricious, and so wasteful of both the policyholder’s and the accident victim’s money that most laymen find it hard to believe the facts when they are first presented.”

Needed: A Basic Reform of Automobile Liability Insurance: Part 6, 27 CONSUMER REPORTS 404 (1962).

“Our system is no longer one of liability based on fault in the sense that made it originally seem so fair and gave it so strong a moral claim. No longer does it make the wrongdoer pay for the injuries caused by his wrong. Rather, it thrusts vicarious atonement for those wrongs on innocent persons. And this is true however clear and meaningful our notion of fault may be. The question no longer is in fact whether A should pay for B’s injury but whether the cost of that injury should be distributed over the insured motoring public or some other large group.”

James, *An Evaluation of the Fault Concept*, *supra* note 20, at 389-99.

THE PRESENT SYSTEM IN PRACTICE

The preceding section discussed what the fault insurance system is supposed to do, and what features are inherent in the system as a matter of theory. This section examines how the system actually works.

When fault law developed, there were no automobile accidents. In 1968, there were 14.6 million automobile accidents in the United States.²³

It is not necessary to belabor the point that fault law, the courts and liability insurance were not designed to deal with the accident-causing propensity of the modern automobile.²⁴ Nor is it necessary to belabor the point that the automobile has placed heavy burdens on all three institutions.

Under these burdens, the fault insurance system might be expected to display in striking degree the defects—such as delay and inefficiency—that inhere in the system in theory. Nor would it be surprising if additional defects emerged upon an examination of the present system in practice.

This section will cover both personal injury liability insurance and property damage liability insurance. But our emphasis will be on personal injury, where the data are more complete and the human needs are more acute. In fairness, we

23. See NATIONAL SAFETY COUNCIL, ACCIDENT FACTS, *supra* note 3, at 40.

24. See, e.g., C. KULP & J. HALL, *supra* note 11, at 546-52, 579-82; *A Plan for Auto Insurance Reform*, 33 CONSUMER REPORTS 10 (1968). In his Consumer Message to Congress in 1968, President Johnson said:

"Accident compensation is often unfair: Some victims get too much, some get too little, some get nothing at all. Lawsuits have clogged our courts. The average claim takes about two and one-half years just to get to trial. This is a national problem. It will become even more of a problem as we license more drivers, produce more automobiles and build more roads. With more than 100 million drivers and 96 million motor vehicles in the United States, the insurance system is severely strained today. . . ."

President's Special Message to Congress, *The American Consumer*, Feb. 6, 1968, 114 CONG. REC. H. 810 (H. DOC. NO. 248, 90th Cong., 2d Sess., 1968).

should acknowledge at the outset that some of the practical failings of the fault insurance system are worse in personal injury than in property damage cases. One of the ironies of the fault insurance system may be that it does better by damaged automobiles than by damaged people.

Mindful of the questions posed at the beginning of this Report, we will first take up several characteristics of the fault insurance system in practice which reveal how the system works in compensating victims. Which victims get paid, and when and how much?

Then we will take up those characteristics of the system that will help us trace the premium dollar. Where does the money go? What does the policyholder get for his money? For whose benefit is the fault insurance system operated?

Finally, we will try to measure the working system against the theoretical one, and to draw any available lessons as to the future prospects of the fault insurance system.

What are the characteristics of the present system in practice?

Uncompensated Victims

We saw that, by its own theory, the fault insurance system is not supposed to pay benefits to everyone who suffers loss in an automobile accident.

The practice quite lives up to the theory. One out of every four people suffering bodily injury in an automobile accident in this State receives nothing whatsoever from the fault insurance system.²⁵

25. Based on an empirical New York City study conducted by the Columbia University Project for Effective Justice. Franklin, Chanin & Mark, *Accidents, Money and The Law: A Study of the Economics of Personal Injury Litigation*, 61 COLUM. L. REV. 1, 34 (1961). See also R. HUNTING & G. NEUWIRTH, WHO SUES IN NEW YORK CITY? (1962); H. ZEISEL, H. KALVEN & B. BUCHHOLZ, DELAY IN THE COURT (1959); Rosenberg & Sovern, *Delay and the Dynamics of Personal Injury Litigation*, 59 COLUM. L. REV. 1115 (1959). Studies of two different sets of

Delay

Even where the fault insurance system pays something, it pays slowly. Injured victims of automobile accidents face average delays in collecting under automobile liability insurance that are ten times as long as the delays in collecting under collision, homeowners or burglary insurance and forty times as long as delays under accident and health insurance.²⁶

Statewide data have indicated similar proportions of victims not receiving any compensation through the fault insurance system in New York State. One of these studies estimated that 22% of victims got nothing from the present system. F. HARWAYNE, *AUTOMOBILE BASIC PROTECTION COSTS EVALUATED* 7 (1968). As a further check, the Insurance Department requested Mr. Jeffrey Lange, who as a consulting actuary had participated in a 1968 survey of closed claim records of 11,000 bodily injury accidents, to furnish special computer runs of the New York data included in that study. See AMERICAN INSURANCE ASSOCIATION, *REPORT OF SPECIAL COMMITTEE TO STUDY AND EVALUATE THE KEETON-O'CONNELL BASIC PROTECTION PLAN AND AUTOMOBILE ACCIDENT REPARATIONS* (1968) (hereinafter cited as A.I.A. REPORT). From these data, Department actuaries estimated that about 29% of the New York State victims received no payments through the fault insurance system. Further information with respect to the New York State data is available at the Insurance Department. Some studies made in other jurisdictions indicate a somewhat larger proportion of uncompensated victims. See, e.g., A. CONARD, J. MORGAN, R. PRATT, C. VOLTZ & R. BOMBAUGH, *AUTOMOBILE ACCIDENT COSTS AND PAYMENTS; STUDIES IN THE ECONOMICS OF INJURY REPARATION* 147-49 (1964) (Michigan) (hereinafter cited as CONARD *et al.*, *AUTOMOBILE ACCIDENT COSTS AND PAYMENTS*); A. LINDEN, *REPORT OF THE OSGOOD HALL STUDY ON COMPENSATION FOR VICTIMS OF AUTOMOBILE ACCIDENTS*, Chs. III, IV and IX (1965) (Ontario). All these figures are for payments under the fault insurance system and do not take into consideration payments from no-fault, first-party coverages, whether ancillary to the liability insurance contract (e.g., medical payments insurance) or not (e.g., health insurance).

26. As part of this study, Insurance Department examiners conducted special field reviews of insurance company files, obtaining a representative sample consisting of 7,000 paid insurance claims closed during September 1969 (of which 1,000 were automobile bodily injury liability claims). The examiners' findings were as follows:

INTERVAL BETWEEN CLAIM AND PAYMENT FOR SELECTED LINES OF INSURANCE

Interval Between Claim and Payment	Auto Bodily Injury Liability	Auto Physical Damage	Home- owners	Burglary	Individual Accident and Health
2 months or less	23%	79%	92%	64%	98%
6 months or less	49	98	99	97	99
1 year or less	71	99	99	99	100
2 years or less	83	100	100	99	—
3 years or less	88	—	—	100	—
Average period (months)	15.8	1.5	1.6	1.9	0.4

The average delay in paying automobile personal injury liability claims in this State is well over a year.²⁷ A typical large claim waits longer than a typical small claim.²⁸ While waiting, the victim usually gets nothing from the fault insurance system.²⁹

These findings are more than confirmed by preliminary data from the New York State portion of the closed claim survey being conducted by the U.S. Department of Transportation (D.O.T.) as part of its ongoing Automobile Insurance and Compensation Study. The New York portion of the D.O.T. survey covered 4,000 automobile bodily injury liability claims in this State and its preliminary results, which were generously provided to us by D.O.T., show even longer delays than our examiners found—only 61% of the claims paid within one year and 74% within two years. *See* D.O.T. Closed Claim Survey—New York portion, Table 131 (details in note 28 *infra*). *See also* CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 221-22, 242-45; Franklin, Chanin & Mark, *supra* note 25, at 63-66; Rosenberg & Sovern, *supra* note 25, at 85-89, 94, 116-20.

27. As noted in note 26 *supra*, the average delay for automobile bodily injury liability claims in New York is 15.8 months.

28. Preliminary New York data from the D.O.T. Closed Claim Survey, *supra* note 26, show, as follows, how the larger claims face the longer delays:

INTERVAL BETWEEN CLAIM AND PAYMENT BY SIZE OF PAYMENT

<i>Interval Between Claim and Payment</i>	<i>Under \$200</i>	<i>\$201-\$1,000</i>	<i>\$1,001-\$5,000</i>	<i>Over \$5,000</i>	<i>All Claims</i>
2 months or less	63%	16%	4%	2%	24%
1 year or less	89	61	41	19	61
2 years or less	92	74	61	41	74
2 2/3 years or less	94	80	70	52	80

Source: Derived from D.O.T. Closed Claim Survey—N. Y. portion, Table 131.

The New York Insurance Department examiners' survey, *supra* note 26, made similar findings—the 17% of claims unpaid after two years represent 45% of the total dollar loss. *See also* CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 222-23; Franklin, Chanin & Mark, *supra* note 25, at 65. *See generally* 4 N.Y. TEMP. COMM. ON THE COURTS, N.Y. Legis. Doc. No. 6 (c), at 9 (1957); Corstvet, *The Uncompensated Accident and Its Consequences*, 3 LAW & CONTEMP. PROB. 466, 468 (1936); Hofstadter & Pesner, *A National Compensation Plan for Automobile Accident Cases*, 22 RECORD OF N.Y.C.B.A. 615, 618 (1967); Rosenberg & Sovern, *supra* note 25, at 1115, 1121-24. *See* note 31 *infra* for findings based on independent data in Insurance Department records.

29. Professor Maurice Rosenberg, former Director of The Columbia University Project for Effective Justice, has said:

"They [the empirical studies] find . . . that the more seriously injured victims feel the pinch of delay and feel the weight of the fault system in general very, very heavily, that is, that they are very often left as economic derelicts, they suffer a great amount of privation and their economic lives are destroyed by this system."

The delays are long both in and out of court. The cases that go to trial, which involve the largest claims of all, encounter truly incredible delays—between four and five years in the largest counties in this State. But even for claims that do not go to trial, the fault insurance system takes a long time to pay.³⁰ And the delays are getting worse, not better.³¹

Meeting of New York Governor's Committee on Compensating Victims of Automobile Accidents, Transcript, 82, 84 (Feb. 29, 1968). See also R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM: A BLUEPRINT FOR REFORMING AUTOMOBILE INSURANCE 1-2 (1965) (hereinafter cited as KEETON & O'CONNELL, BASIC PROTECTION). The Michigan empirical study concluded:

"The length of time from injury to settlement is very important to injury victims. During that time there is likely to be hesitation to obtain the fullest desirable medical treatment, for fear of the burden of paying for it. If the victim is a wage earner, the family may well go on reduced rations, and even become a 'relief case' while awaiting the settlement."

CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 221. Many insurance companies have acknowledged the problem of delay, and have experimented with various ways of hastening payment. See, e.g., *Automobile Insurance: An Experiment in Reform*, a speech by Paul Wise, General Manager of American Mutual Insurance Alliance, before the Mutual Insurance Technical Conference, Nov. 13, 1967. Since advance payment programs within the fault insurance system virtually must be limited to cases of clear liability or cases where the victim waives his right to sue, or both, their ability to ease the overall problem of delay is very limited.

30. For delay on claims that go to trial, see INSTITUTE OF JUDICIAL ADMINISTRATION, CALENDAR STATUS STUDY—1969, STATE TRIAL COURTS OF GENERAL JURISDICTION, PERSONAL INJURY JURY CASES vi-vii (1969). Data for cases that go to trial are based on time interval between service of answer and trial for personal injury jury cases. See also KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29, at 14-15. The D.O.T. Closed Claim Survey (see note 26 *supra*), New York portion, Tables 137-45, indicates that even after 2 years and 8 months from date of claim, only 19% of the cases that went to trial were resolved (by verdict or settlement).

"Today the law's delays in civil suits are intolerable. An unrelenting flow of automobile accident personal injury cases has inundated our trial courts. Cases are delayed a year, two years or more in reaching trial, and the delays are often longest when the need for prompt relief is most imperative. The more severe and disabling a claimant's injuries are, the longer he has to wait for reparation."

THE AMERICAN ASSEMBLY—THE COURTS, THE PUBLIC AND THE LAW EXPLOSION, REPORT OF THE TWENTY-SEVENTH AMERICAN ASSEMBLY 6 (1965).

Even for claims that do not go to trial, the D.O.T. Closed Claim Survey (see note 26 *supra*) New York portion, Tables 137-45, indicates that 36% were still unpaid after one year and 23% were unpaid after two years.

31. From data in N.Y.S. INS. DEPT., 1968 LOSS AND EXPENSE RATIOS 118, Insurance Department statisticians have derived the proportion of total auto-

It would appear that automobile litigation is the major cause of court congestion, but the easy converse—that court congestion is the major cause of delay in automobile liability payments—may not be true at all. The reasons for delay are probably deeper. The fault insurance system involves abstract rules, indefinite measures of damages and antagonistic claims situations. By whatever mixture of judicial decisions and negotiated settlements such a system disposes of claims, large delays would seem to be unavoidable.³²

Unpredictability

The fault insurance system operates through thousands of legal and extra-legal forums that apply its rules unevenly and unpredictably.

Because the legal rules of fault were laid down by appellate courts, it is easy to imagine the system is directed by those

mobile bodily injury liability losses which remain unpaid after periods of two to five years from date of accident. The proportion is going up, as follows:

RATIO OF LOSSES OUTSTANDING TO LOSSES INCURRED

<i>Policy Year</i>	<i>After 2 years</i>	<i>After 3 years</i>	<i>After 4 years</i>	<i>After 5 years</i>
1959	.41	.27	.17	.10
1960	.42	.28	.18	.10
1961	.44	.29	.19	.12
1962	.44	.30	.19	.12
1963	.46	.31	.21	.13
1964	.45	.32	.23	
1965	.47	.34		
1966	.47			

32. On the basis of an examination of claim files and field interviews with adjusters, attorneys and claimants, Professor H. Laurence Ross of the University of Denver concluded:

"Although delay may be used as a negotiation tool, much of the delay actually experienced in handling automobile liability claims would seem to be inherent in the nature of good-faith negotiation under the law of negligence. The fact that tried cases take little longer to terminate than do all sued cases suggests that it is not so much congestion in the courts that accounts for delay, as it is the time-consuming procedures involved in investigation and negotiation."

H. ROSS, *SETTLED OUT OF COURT: A SOCIOLOGICAL STUDY OF INSURANCE CLAIMS ADJUSTMENT* Ch. 5 (galley proof of book to be published in 1970 by Aldine Publishing Company, Chicago, as part of the Law in Action series).

courts. But it is not. Only about 1% of automobile liability claims are decided by a court, and very few of these get to the appellate courts.³³

The litigated cases come up under circumstances which hardly permit accurate and uniform findings, and whose general surreality has been commented upon by many authorities.³⁴

The other 99% of the claims are settled in a proliferation of forums outside the judiciary—typically in unrecorded, private sessions between a claimant or his attorney and an insurance adjuster. The expense and delay of court trials make

33. Figures are for bodily injury liability cases. A New York City study found 1.3% of such claims going to verdict. Rosenberg & Sovern, *supra* note 25, at 1115. A Michigan study found 0.4%. CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 155.

34. Dean William Prosser of the University of California's Hastings College of Law, a leading American scholar of tort law, has commented on the trial of automobile negligence cases, as follows:

"The process by which the question of legal fault, and hence of liability [in automobile accident cases] is determined in our courts is a cumbersome, time-consuming, expensive, and almost ridiculously inaccurate one. The evidence given in personal injury cases usually consists of highly contradictory statements from the two sides, estimating such factors as time, speed, distance and visibility, offered months after the event by witnesses who were never very sure just what happened when they saw it, and whose faulty memories are undermined by lapse of time, by bias, by conversations with others and by the subtle influence of counsel. Upon such evidence, a jury of twelve inexperienced citizens, called away from their other business if they have any, are invited to retire and make the best guess they can as to whether the defendant, the plaintiff, or both were 'negligent', which is itself a wobbly and uncertain standard based upon the supposed mental processes of a hypothetical and non-existent reasonable man. European lawyers view the whole thing with utter amazement; and the extent to which it has damaged the courts and the legal profession by bringing the law and its administration into public disrepute can only be guessed."

W. PROSSER, *supra* note 8, at 580. See also L. GREEN, *supra* note 9, at 66-68; KEETON, COMPENSATION SYSTEMS, *supra* note 20, at 42; L. NORMAN, ROAD TRAFFIC ACCIDENTS — EPIDEMIOLOGY, CONTROL AND PREVENTION 51 (World Health Organization Public Health Papers No. 12, 1962); Nixon, *Changing Rules of Liability in Automobile Accident Litigation*, 3 LAW & CONTEMP. PROB. 476, 477 (1936); Moynihan, *Next: A New Auto Insurance Policy*, N. Y. Times, Aug. 27, 1967, §6 (Magazine), at 76-78; Rokes, *Memory Taints Witness Credibility*, TRIAL, Aug.-Sept. 1969, at 46.

the judiciary, in practice, a remote forum, and it is unlikely that the law of the appellate courts is a forceful or precise guide to what goes on in the adjuster's office.³⁵

The essential fact is that the adjustment of claims is not a decision-making process, where a disinterested third party, with power to impose its decisions on the other two, finds the facts, interprets the law and thereupon decides who is right and how much is owed. Rather it is a bargaining process in which each of two antagonists tries to get an advantageous agreement out of the other.

The standards of liability and of measurement of damage are so abstract as to give wide latitude to this bargaining process in any given case. While the facts and the law are not without relevance to the bargaining, it would be naive to suppose that they are the only, or even the strongest, influences.

Thus, under the fault insurance system, determinations are made either by an overburdened judiciary on stale facts or else by insurance adjusters in a bargaining process. Part lottery and part bazaar, the fault insurance system is unreliable and unpredictable.³⁶

35. "The net result is that the fact and the amount of any recovery are likely to turn on factors that have little to do with the theoretical merit of the case and are inversely proportioned to the need of the victim."

James, *History of the Law Governing Recovery in Automobile Accident Cases*, *supra* note 10, at 321, 324-25. "The fine weighing of evidence concerning negligence envisaged by the formal law does not in fact take place." H. Ross, *supra* note 32, Ch. 1.

36. "The cost of such [automobile] insurance steadily rises and yet there is no certainty that an injured individual can collect if he is involved in an accident. . . . A much simpler system is needed, providing for universal coverage . . . without extensive and time-consuming litigation."

N. Y. Times Editorial, Feb. 15, 1968, at 42, col. 1.

"The shortcomings of our bodily injury liability system are particularly conspicuous when contrasted with other kinds of insurance written by the same companies or their affiliates. When you die, your life insurance company does not refuse to pay your widow on the ground that you contributed to the unfortunate result by

Malapportionment of Benefits

Even where and when it pays, the fault insurance system distributes the available money with no discernible regard for priorities, let alone intelligent or humane priorities.

The law of fault was, as we have seen, first the law of determining whether one person should be held financially responsible for damage to someone else.³⁷ If the claimant or plaintiff could prove that the damage was due to the defendant's negligence, and his alone, then the law required the defendant to pay the plaintiff.

The next question was how much was to be paid. Surely the plaintiff's economic loss.³⁸ But why not something more? When the question first came up, and when it was resolved in a way that has endured from that day to our own, there

smoking too many cigarettes or eating too much. When your house burns down, your insurance company does not refuse to pay on the ground that you should have had your roof resingled with fire-resistant materials. When you are hospitalized for a broken leg, your health insurance company will not refuse payment on the ground that if you had replaced that burned-out bulb over your staircase, you wouldn't have fallen down the stairs. Yet, defenses parallel to these are the common grist of automobile liability cases."

Needed: A Basic Reform of Auto Liability Insurance: Part 6, 27 CONSUMER REPORTS, supra note 22, at 406.

"Much of the bitterness toward automobile insurance companies, and the rates they charge, can be traced to the underlying imperatives of our common law tradition of liability based on fault. A system is not reliable which does not compensate you adequately and promptly when you find yourself compelled to make use of it."

Testimony of Pennsylvania Insurance Commissioner David Maxwell, in *Hearings on S. Res. 233 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 90th Cong. 2d Sess. 714-18 (1968).

37. See pp. 7-9 *supra*.

38. The term "economic loss," as used in this Report, includes past and future dollar losses resulting from (a) bodily injury, including hospital, surgical and medical expense, loss of income and miscellaneous out-of-pocket expenses; and (b) damage to automobiles and other property. The only exception to this use of the term "economic loss" is in the ensuing discussions of the economic loss data in the D.O.T. Closed Claim Survey, where "economic loss" was defined to mean only past, or pre-settlement, losses. See note 41 *infra*.

were few accidents and no insurance or other socio-economic considerations before the court—just two individuals, one already adjudged guilty and the other hurt and adjudged innocent. In those unambiguous circumstances, why indeed should not the court award the plaintiff something extra for enduring pain or disfigurement or inconvenience or loss of dignity, or to cover his legal fees, or just to teach the defendant a lesson? This excess of the award over the claimant's economic loss is called "general damages" or "pain and suffering."³⁹

The old decision was not wrong when made, but in practice the contemporary fault insurance system has made it over into something else. The practical results today are almost the reverse of what either the history of the law or sensible priorities would lead us to expect.

The award for "pain and suffering" is no longer ancillary to the award for economic loss. Quite the contrary. In the typical case today the award for "pain and suffering" is larger than the award for economic loss.⁴⁰

Nor is this strange fact traceable to the big case of terrible injury. Quite the contrary. It is the small case, the minor

39. See 2 F. HARPER & F. JAMES, *supra* note 8, §25.10; C. MCCORMICK, DAMAGES §88 (1935). It is suggestive that "pain and suffering", as an object of compensation, is confined to legal liability situations. The human misfortunes covered by such first-party insurances as fire insurance and health insurance can involve as much pain and suffering, in the real physical or psychological sense, as can an automobile accident. Yet those insurances pay economic loss only with no override for "pain and suffering", and there does not appear to be any demand for such an override in those first-party insurances.

40. The amount paid for non-economic loss (*i.e.*, "pain and suffering") under the fault insurance system averages nearly one and a half times the amount paid for economic loss. A.I.A. REPORT, *supra* note 25, at 16. This ratio of non-economic loss payments to economic loss payments is confirmed by the experience of the nation's largest automobile insurance company:

"In State Farm's experience, a 60/40 rule of thumb closely approximates our actual settlement costs; that is, we pay \$60 for general or psychic loss for every \$40 in actual medical, wage loss and other out-of-pocket expenses."

Testimony of Thomas C. Morrill, Vice President, State Farm Mutual Automobile Insurance Company, Before the Antitrust and Monopoly Subcommittee of the Senate Committee on the Judiciary, at 33 (Dec. 9, 1969).

injury, that receives proportionately the largest award for "pain and suffering."⁴¹

For example, a leading empirical study revealed that of accident victims with small economic losses, one-third were significantly overpaid, receiving through the fault insurance system at least 1½ times their economic loss. But only 18 percent of them were underpaid, receiving less than three-fourths of their economic loss.⁴²

By contrast, the same study found that of the victims with the largest economic losses, none was overpaid and all were underpaid. Not one received so much as three-fourths of his economic loss, and 71 percent of them received less than one-quarter of their economic loss through the fault insurance system.⁴³

41. The D.O.T. Closed Claim Survey, *supra* note 26, indicated that (a) where economic loss was \$200 or less, the claimant was paid more than twice his economic loss (*i.e.*, non-economic payments exceeded payments for economic loss) in 77% of the cases, and (b) where economic loss was between \$201 and \$1,000, the claimant was paid more than twice his economic loss in 55% of the cases. Derived from D.O.T. Closed Claim Survey (*see* note 26 *supra*) New York portion, Table 78. *See* note 38 *supra* for the definition of "economic loss" used in the D.O.T. Closed Claim Survey. *See also* CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 178-79; KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29, at 36-37; A. LINDEN, OSGOOD HALL STUDY, *supra* note 25, at Table II-1; MORRIS & PAUL, *The Financial Impact of Automobile Accidents*, 110 U. PA. L. REV. 13 (1962); *Meeting of New York Governor's Committee on Compensating Victims of Automobile Accidents, Transcript*, 143-46 (Apr. 16, 1968). Different studies choose different dollar amounts as the borderline between "small" and "large" claims. The Conard study, whose figures are shown in the text accompanying notes 42 and 43 *infra*, used \$1,000 as the upper limit on "small" claims.

42. CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 197.

43. *Id.* The American Bar Association study of the automobile reparations system confirmed this finding. "The worse the case, in terms of loss, the greater the statistical chance of receiving inadequate reparation." AMERICAN BAR ASSOCIATION, REPORT OF THE SPECIAL COMMITTEE ON AUTOMOBILE ACCIDENT REPARATIONS 104 (1969) (hereinafter cited as A.B.A. REPORT). Even if payments from sources outside the fault insurance system are added onto the automobile insurance benefits, the victim with the most serious loss still receives less than his full economic loss and the overcompensation of the small case is, obviously, even greater than under the fault insurance system alone. CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 4-7, 196-99, 250-52.

What does all this mean in human terms? It means that the fault insurance system overcompensates the slightly injured and undercompensates the seriously injured.⁴⁴

The reason is not far to seek. Under the fault insurance system—where highly abstract rules of liability and valuation are applied, case by case, to fleeting fact situations—every claim has a value just by virtue of its existence. It involves the certainty of administrative costs and uncertainty as to the eventual award. In bargaining over negligence claims, it is worth something to the insurer to get rid of the claim and worth something to the claimant to be sure of getting paid.

In the typical small case, this certainty—closing the claim—is worth more to the insurance company than it is to the claimant. So small claims are overpaid, the excess over economic loss being called “general damages” or “pain and suffering.”⁴⁵ But in the large case, the certainty is usually

44. This cruel imbalance has been documented again and again. *See, e.g.*, 1 BRITISH COLUMBIA, ROYAL COMMISSION ON AUTOMOBILE INSURANCE, REPORT OF THE COMMISSIONERS 404 (1968); CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 192-99; KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29, at 2; James & Law, *Compensation for Auto Accident Victims: A Story of Too Little and Too Late*, 26 CONN. B. J. 70, 79-80 (1952); MORRIS & PAUL, *supra* note 41, at 913, 918-19; NATIONAL ASS'N OF INSURANCE COMMISSIONERS, AUTOMOBILE INSURANCE STUDY BACKGROUND MEMORANDUM IN REPORT OF THE SPECIAL COMMITTEE ON AUTOMOBILE INSURANCE PROBLEMS 106 (1969) (hereinafter cited as N.A.I.C. REPORT). In New York State, the imbalance in compensation has been a matter of record for decades. *See* COLUMBIA UNIV. COUNCIL FOR RESEARCH IN THE SOCIAL SCIENCES, REPORT BY THE COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS 63 (1932).

45. “There is growing evidence that many automobile injury claims, particularly the small claims, are settled on quite generous terms. Because it often is cheaper to overpay a small claim than defend it in court, the general damages paid in small cases tend to run proportionately much higher than the general damages paid in the larger, more serious cases.”

AMERICAN MUTUAL INSURANCE ALLIANCE, STATEMENT ON AUTOMOBILE ACCIDENT LAW AND AUTOMOBILE INSURANCE 10 (Nov. 21, 1969).

“Small claims tend to be overpaid to avoid the time and expense of defending ‘nuisance’ claims. To the extent payments are overly generous, the premiums charged to all policyholders must be increased.”

N.A.I.C. REPORT, *supra* note 44, at 100.

worth more to the claimant than to the insurance company. So large claims are underpaid.⁴⁶ The seriously injured receive a sort of negative "pain and suffering."

All this is not to say that pain is not real, or that money is of no use as a balm. But it does make clear that in the typical case under today's fault insurance system, "pain and suffering" is a misnomer and an expensive one.⁴⁷

"The principal pressure on the adjuster from his supervisor is to close cases promptly. There is, of course, pressure to close them cheaply, but it is not in practice as insistent and is easier to resist by depicting troublesome cases as worthy cases. Adjusters quickly learn that claims are extinguished most easily by paying them. Unclosed files form visible accumulations and generate complaints to managers and supervisors, whereas closed files trouble no one. Thus, there is strong pressure originating within the company to offer payment whenever a claims man is faced with a firm demand from a claimant."

H. Ross, *supra* note 32, Ch. 1. *See also* testimony of Thomas C. Morrill, *supra* note 40, at 33.

46. "Large claims are often strenuously resisted resulting in no payment or in compromise settlements."

N.A.I.C. REPORT, *supra* note 44, at 100.

"Those who have suffered injuries in automobiles know that prompt payment of compensation is rare, and that the gap between loss and compensation is vast. . . . The long delays, characteristic of this system, produce a cruel injustice that strikes harder as injuries are more severe. A hard bargaining insurance company can buy the claim of such a person with a penurious settlement offer that capitalizes on his pressing needs in face of a long wait for trial."

COMMUNICATIONS WORKERS OF AMERICA, EXECUTIVE BOARD STATEMENT — INSURANCE OR ASSURANCE? in *Hearings on S. J. Res. 129 Before the Consumer Subcomm. of the Senate Commerce Comm.*, 90th Cong., 2d Sess., ser. 90-60, at 180-81 (1968) (Appendix). For a discussion of organizational reasons why insurance company adjusters tend to resist large claims, *see* H. Ross, *supra* note 32, Ch. 5.

In this discussion, we do not mean to imply that the dollar limits in automobile liability insurance policies have no role in the undercompensation of victims with large losses, but the evidence indicates that their role is not a major one and that even removing the limits entirely would not remedy the undercompensation of such victims.

47. "[T]he measurement of pain, suffering and inconvenience is thoroughly routinized in the ordinary claim. The adjuster generally pays little attention to the claimant's privately experienced discomforts and agonies; I do not recall ever having read recitals of these matters in the statements, which are the key documents in the settlement process and in which all matters considered relevant to the disposition of a claim are recorded. The calculation of

Lack of Coordination of Benefits

Where and when and however much or little the fault insurance system pays, its benefits are not coordinated with those from other sources.

An accident victim often is entitled to payments from such sources as health insurance and income continuation plans. Today 91 percent of the workers in this State are covered by health insurance, and most are covered by income continuation plans as well.⁴⁸

These and other sources pay significant benefits to traffic victims.⁴⁹ But under the "collateral source rule" of the fault

general damages is for the most part a matter of multiplying the medical bills by a tacitly but generally accepted arbitrary constant."

H. Ross, *supra* note 32, Ch. 5.

"[Pain and suffering recovery] involves the luxury of permitting highly speculative nonpecuniary damages when other victims may be only partially or not at all compensated for their economic losses."

N.A.I.C. REPORT, *supra* note 44, at 104-05. For general criticism of the common law system of damage awards for "pain and suffering", see Jaffe, *Damages for Personal Injury: The Impact of Insurance*, 118 LAW & CONTEMP. PROB. 219 (1953); Plant, *Damages for Pain and Suffering*, 19 OHIO ST. L. J. 200, 210-11 (1958). For "pain and suffering" as designed to pay the plaintiff's legal expenses, see Morris, *Liability for Pain and Suffering*, 59 COLUM. L. REV. 476, 477 (1959). For "pain and suffering" as an arbitrary and varying multiple of economic loss, whence the lawyers' talk of "x times specials," see Zelermyer, *Damages for Pain and Suffering*, 6 SYR. L. REV. 27 (1954). But see W. BLUM & H. KALVEN, PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW PROBLEM: AUTO COMPENSATION PLANS 34-36 (1965). For a criticism of "pain and suffering" damages as economic resource misallocations, see G. CALABRESI, *supra* note 19, at 215-25.

48. New York State's employed labor force was 6,297,000 in 1967, of whom 5,705,000 or 91% were covered by some form of health insurance. Letter from N.Y.S. Labor Dept. to N.Y.S. Ins. Dept., Jan. 5, 1970. Most New York State employees (except government employees, farm laborers, non-profit professionals and railroad and maritime workers, among others) are covered by statutory disability benefits insurance. N. Y. WORK. COMP. LAW §201 (McKinney 1965), as amended (Supp. 1969). Of the occupational groups excluded from the New York Disability Benefits Law, government employees are largely covered by paid sick leave plans, and railroad employees are covered by the Railroad Unemployment Insurance Act, 45 U.S.C. §§351-367 (1954), as amended (Supp. 1969).

49. CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 62-64, 66-74. The Conard study estimated that 45% of the traffic accident victim's total recovery for personal injury and property damage losses is derived

insurance system, these other benefits are generally disregarded in setting the automobile liability insurance award.⁵⁰

This lack of coordination of benefits between the fault insurance system and other sources is bad, both as a matter of insurance theory and as an impediment to the smooth functioning of the various reparations systems involved.⁵¹ It also has bad effects on insurance consumers and accident victims.

One such bad effect is that an employee with good fringe benefits does not see those benefits reflected in an immediate lowering of his automobile insurance premiums. Frequently those fringe benefits are collectively bargained and are financed by employer and employee contributions. What the employer pays is an obvious cost to him. What the employer pays is also a cost to the employee, in that it typically represents the giving up of some equivalent wage or fringe benefit item that might otherwise have been bargained for.

Yet no matter how progressive his fringe benefits, the employee's automobile insurance premiums are unaffected. All

from sources completely outside the fault insurance system (*e.g.*, accident and health insurance and income continuation plans) and from no-fault insurances engrafted upon the fault insurance system (*e.g.*, medical payments and collision insurances).

50. The "collateral source rule" of damages in negligence actions holds that the defendant should not benefit (by paying lower damages) by the happenstance that his victim, the plaintiff, received compensation from another source (*e.g.*, the victim's own health insurance). The rule is understandable in the historical context in which it developed—when fault law had clear retributive overtones, liability insurance was unheard of, and litigations were seen as involving moral claims entirely based on comparing the conduct of the two individuals at bar. See *Propeller Monticello v. Mollison*, 58 U.S. (17 How.) 152 (1854); Note, *Unreason in the Law of Damages: The Collateral Source Rule*, 77 HARV. L. REV. 741 (1964). By contrast, the two oldest major lines of first-party property insurance (fire and marine) have never had a "collateral source rule", but instead have paid the claimant only his net economic loss. See N.Y. INS. LAW §168 (McKinney 1966); S. HUEBNER & K. BLACK, *PROPERTY INSURANCE* 135 (4th ed. 1957).

51. See CONARD *et al.*, *AUTOMOBILE ACCIDENT COSTS AND PAYMENTS*, *supra* note 25, at 6-7, 25-27. For discussions of the analogous problems of "overinsurance" and lack of coordination of benefits as between different sources of accident and health insurance, as a matter both of theory and of practice, see J. FOLLMAN, JR., *MEDICAL CARE AND HEALTH INSURANCE* 373-83 (1963); Trospen, *Overinsurance—Its Meaning*, 31 J. RISK AND INS. 603 (1964); Wandel, *Overinsurance In Health Insurance*, 32 J. RISK AND INS. 427 (1965).

he gets is a chance at redundant payment if he is injured some time in the future.

Hindrance to Rehabilitation

In personal injury cases, a money award can reimburse the victim for his medical expenses, can replace his lost earnings and can pay him something in addition.

But where the accident victim is in danger of being permanently crippled or scarred, money can never be the best answer. Far better from the victim's standpoint is rehabilitation, so that he not be permanently crippled or scarred and so that he be restored to normal life as quickly and fully as possible.⁵²

The fault insurance system, however, does not promote rehabilitation. It hinders rehabilitation.⁵³

52. "One objective of any reparation system should be actual reduction in disability, economic loss, pain and suffering, as distinguished from compensating for such losses. Significant savings in actual loss can be realized through prompt medical treatment and rehabilitation."

N.A.I.C. REPORT, *supra* note 44, at 108. Workmen's compensation experience with victims of industrial accidents is instructive:

"It is not enough, enlightened administrators of workmen's compensation say, merely to pay for medical care, loss of wages while disabled, and a stated sum for loss of an arm or leg or eye. Instead, the early function of the system should be to restore the ability to work. The injured man is not a back case or a leg case or a hand case, but a complex of many factors, physical, social and psychological which respond to and are affected by a traumatic experience. Rehabilitation addresses itself to the concept of ministering to the needs of the total human being—the whole man. It seeks to return him to gainful employment and a whole life."

N.Y.S. WORK. COMP. BOARD, *PATH TO A NEW LIFE: THE STORY OF REHABILITATION* 8 (1961). See also KEETON & O'CONNELL, *BASIC PROTECTION*, *supra* note 29, at 351-52, 355-56; Conard & Jacobs, *New Hope for Consensus in the Automobile Injury Impasse*, 52 A.B.A.J. 533, 538 (1966).

53. Professor Alfred Conard, co-author of a leading empirical study of automobile accident victims, *Automobile Accident Costs and Payments* (see note 25 *supra*), has testified:

"The first objective of any reparation system should be to rehabilitate injury victims, using 'rehabilitation' in a broad sense to embrace comprehensive care from first aid through occupational retraining (if needed). Rehabilitation not only relieves the individual's own misery, but enables him to carry his weight in society. The tort liability system is a failure in this connection, because its payments

Rehabilitation is most urgently needed in cases of serious injury.⁵⁴ The fault insurance system, as we have seen, pays proportionately least to the seriously injured.

Many techniques of rehabilitation have to be begun promptly.⁵⁵ They cost money. The fault insurance system, as we have seen, pays slowly.

Rehabilitation programs must be planned and often take a long time, thus requiring certainty that money be available for payment over an extended period. The fault insurance system is, as we have seen, unreliable and unpredictable as to whether and, if so, how much it will pay.⁵⁶ Moreover, it makes its payments all at once, in a lump sum, which means that any allowance for future rehabilitation expenses can only be estimated and that there can be no assurance that the money awarded for rehabilitation will still be available when it is needed.⁵⁷

come too uncertainly and too late; even when the victim is certain of payment, he has to make an agonizing choice between money and treatment."

Hearings on H. J. Res. 958 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, 90th Cong., 2d Sess., ser. 90-30, at 85 (1968). See also J. APONTE & H. DENENBERG, supra note 6, at 37; N.A.I.C. REPORT, supra note 44, at 108.

54. NEW YORK UNIVERSITY CENTER FOR REHABILITATION SERVICES, NEW YORK UNIVERSITY WORKMEN'S COMPENSATION STUDY 2-3 (1960).

55. "[T]hough specialists in rehabilitation, like other specialists, disagree about some things, they are unanimous about the need for early referral."

Gellhorn & Lauer, *Administration of the New York Workmen's Compensation Law*, 37 N.Y.U.L. REV. 3, 598 (1962). See also NEW YORK UNIVERSITY CENTER FOR REHABILITATION SERVICES, supra note 54, at 204-05; Allan, *Observations on Rehabilitation In The 60's*, A.B.A. INS. NEGL. AND COMP. LAW SECT. PROCEEDINGS 204, 205 (1963); Fougner, *Automobile Insurance: Doctors Hold Key to Survival*, 182 J. AMER. MED. ASS'N. 59, 60 (1962); Holton, *Rehabilitation of Auto Accident Victims*, 16 ANNALS OF SOC'Y OF C.P.C.U. 121, 124 (1963); Rusk, *New Horizons for Rehabilitation* in NATIONAL CONFERENCE ON WORKMEN'S COMPENSATION REHABILITATION PROCEEDINGS 57 (1950).

56. See pp. 22-24 *supra*.

57. NEW YORK UNIVERSITY CENTER FOR REHABILITATION SERVICES, supra note 54, at 12, 49-50.

Inefficiency

Because of its complex structure and the large number of individual acts and operations it involves, the fault insurance system is inherently expensive to operate. A significant part of the dollar that passes through the mechanism inevitably sticks to the mechanism, burdening consumers and shortchanging victims. That we could see in the system in theory.⁵⁸

What happens in practice? What becomes of the personal injury liability insurance premium dollar?⁵⁹

First of all, insurance companies and agents use up 33 cents.⁶⁰ Then lawyers and claims investigators take the next 23 cents.⁶¹

58. See p. 11 *supra*.

59. The figures for the component elements of the automobile bodily injury liability insurance premium dollar which follow in the text (accompanying notes 60-67 *infra*) are those given in Professor Keeton's *Compensation Systems*, *supra* note 20, at 33. Those figures, in turn, are a synthesis of data from the best available sources for each of the various elements of the premium dollar. Further, Insurance Department actuaries and statisticians have recomputed and independently evaluated the various elements of cost from a number of mutually independent sources—including N.Y.S. INS. DEPT., 1968 LOSS AND EXPENSE RATIOS; A.I.A. REPORT (COST STUDY), *supra* note 25; AMERICAN MUTUAL INSURANCE ALLIANCE, ACTUARIAL COMMITTEE, REPORT ON THE ADEQUACY OF THE COSTING OF THE AMERICAN INSURANCE ASSOCIATION'S "COMPLETE PERSONAL PROTECTION AUTOMOBILE INSURANCE PLAN" (1969); CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25; Harwayne, *Insurance Cost of Automobile Basic Protection Plan in Relation to Automobile Bodily Injury Liability Costs*, 53 CAS. ACTUARIAL SOC'Y PROCEEDINGS 122 (1966); Harwayne, *Insurance Costs of Basic Protection Plan in Michigan*, 1967 U. ILL. L. FOR. 479; HARWAYNE, AUTOMOBILE BASIC PROTECTION COSTS EVALUATED, *supra* note 25; Wolfrum, *Remarks*, 1967 U. ILL. L. FOR. 538; Bailey, *Remarks*, 1967 U. ILL. L. FOR. 557; Franklin, Chanin & Mark, *supra* note 25; James & Law, *supra* note 44; Morris & Paul, *supra* note 41; Rosenberg & Sovern, *supra* note 25—and have concluded that the figures given in Keeton's *Compensation Systems* are reliable and sufficiently precise for the purpose of a general evaluation of the efficiency of the fault insurance system and its allocation of payments for benefits and expenses. For another approach to certain components of the bodily injury liability premium dollar (*e.g.*, redundant payments for losses covered under collateral sources) in connection with cost determination, see Appendix B and materials there cited. Naturally, different studies will produce different figures, and the breakdown of the premium dollar can never be determined with absolute accuracy.

60. See note 59 *supra*.

61. See note 59 *supra*. The figure in the text represents the total of all legal and other claims adjustment expense, for both plaintiffs and defendants.

Together these items make up the operating expenses, or frictional costs, of the fault insurance system—56 cents out of every premium dollar or \$384 million a year in this one State.⁶²

What happens to the 44 cents that get through to the accident victim?

Now victims as a class get the 44 cents, and in that sense the 44 cents could be considered “benefits” paid by the fault insurance system. But such a mechanistic standard of efficiency would be met even if all 44 cents, or \$302 million a year,⁶³ went to one victim while the others got nothing. Obviously the 44 cents cannot be the end of our inquiry. We should consider efficiency in human as well as mechanical terms, which involves looking at what the 44 cents go to pay for.

In respect to legal services required by plaintiffs, a New York City study estimates that, in cases where lawyers are retained, 36% of the total amount recovered is expended for legal fees. Franklin, Chanin & Mark, *supra* note 25, at 33. The then Assistant U.S. Secretary of Transportation stated:

“[T]he impact of legal fees and related expenses tends to fall more heavily on the victims of the more serious accidents—those who typically recover smaller amounts relative to their losses anyway. Of course, lawyers respond to these facts by saying that if it were not for their services and skills, accident victims would wind up with still less. That may well be true, but if it is, it constitutes perhaps the most severe possible indictment of the present tort insurance system as a means for dealing with the human losses sustained in auto accidents.”

Mackey, *The Automobile Insurance and Law Problem in 1968: As Viewed by an Official of Government*, A.B.A. INS. NEGL. & COMP. SECT. PROCEEDINGS 657, 659 (1968).

62. Premiums for 1970 projected by Insurance Department statisticians. The dollar figure is for automobile bodily injury liability insurance alone. See notes 7, 59 *supra*. The President of Consumers Union has said:

“As consumers, we are deeply concerned with the contrast between an administrative cost of 3¢ in Social Security, 7¢ for Blue Cross, 17¢ for health and accident plans, and 55¢ of the premium dollar for auto insurance, leaving only 45¢ to pay victims’ costs. (Included in the 55¢ is 25¢ to pay the legal expenses of an adversary system of awarding insurance claims.)”

Warne, *Let's Hear From The Insurance Consumer*, 36 INS. COUNS. J. 494, 496 (1969). See also CONARD *et al.*, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS, *supra* note 25, at 59.

63. See notes 7, 62 *supra*.

First, 8 cents of the 44 go to pay for economic losses that have already been reimbursed from another source.⁶⁴ Subtracting these redundant benefits as having low priority leaves 36 cents of the premium dollar to pay net losses of victims.⁶⁵

But of those 36 cents, 21.5 cents go for something other than economic loss. The 21.5 cents are lumped together as "general damages" or "pain and suffering" which, in the typical case today, are simply by-products of the bargaining process of insurance adjustment.⁶⁶ Once we look beyond the name which the operators of the fault insurance system have given this non-economic portion of liability payments and understand what it really is in the usual case, it assumes a low priority by any social or humane standard.

That leaves just 14.5 cents out of the premium dollar as compensation for the net economic loss of the accident victim—\$100 million out of the \$686 million which New Yorkers spend each year for automobile bodily injury liability insurance.⁶⁷

64. See note 59 *supra*. For a discussion of the "collateral source rule" under the fault insurance system, see note 50 *supra*.

65. For a discussion of priorities, see pp. 61, 63-64, 103-04 *infra*.

66. See pp. 28-29 and note 59 *supra*.

67. See notes 7, 62 *supra*. Thus, for every dollar in net economic benefits which gets through to the victim, almost six additional dollars in policyholder premiums are required. The discussion of the inefficiency of the fault insurance system in this section concerns bodily injury liability insurance, whose annual premiums are now \$686 million in this State. See note 7 *supra*. The discussion does not cover property damage liability insurance, whose annual premiums here are \$269 million, because comparably precise data are not available. Insurance people tend to believe that, under the fault insurance system, property damage liability insurance is more efficient than is bodily injury liability insurance. It is not yet known to what extent that belief is well founded. Many elements of expense are about the same for the two kinds of automobile liability insurance. Property damage liability insurance would seem to involve the same type of adversary claims bargaining which we found, in personal injury cases, to lead to overpayment of small claims. It is not known whether the measure of damages in property damage is indefinite enough to give full play to such claims bargaining, for we do not yet know the effect of the known presence of liability insurance on repair costs and on decisions by the claimant and his repairman as to how extensive the repairs and replacements should be.

In our judgment, the profligacy of the operating costs of the fault insurance system, and its wantonness in mismatching limited resources with serious human needs, would be enough to bring the whole system down someday even if there were nothing else wrong with it.

Overreaching and Dishonesty

The fault insurance system encourages dishonesty and overreaching by both claimants and insurers.

Despite efforts by the courts and regulatory agencies, no way has been found of applying continuous, fair and effective social control over the claims practices of automobile liability insurers. One reason is that the insurer is dealing with thousands of claimants who are adversaries the company never expects to see again, and is doing so in situations that afford no clear line between rigorous bargaining and downright dishonesty.⁶⁸

The delays and bargaining postures which the fault insurance system encourages favor the strong over the weak. A personal injury case often pits an injured individual against a multi-million dollar insurance company. Too often, espe-

68. The complaint records of the Insurance Department show a far higher incidence of citizen complaints about third-party liability coverages than about first-party coverages (where the claimant is usually the policyholder), as follows:

COMPLAINTS PER MILLION DOLLARS OF PREMIUM

Year	Third-Party Liability Coverages	First-Party Coverages (including auto physical damage, fire, extended coverage, homeowners and accident and health insurance)	First-Party Coverages (same as middle column, plus life insurance)
1966	6.03	2.64	1.54
1967	5.49	2.20	1.32
1968	6.40	2.59	1.56

Source: Derived from N.Y.S. INS. DEPT., ANN. REP. OF THE SUPT. OF INS. (1966, 1967 and 1968) and STATISTICAL TABLES FROM ANNUAL STATEMENTS (1967, 1968 and 1969). A similar contrast has been reported in the Consumers Union studies. *How Good Is Your Automobile Insurance?: Part 2*, 27 CONSUMER REPORTS 204, 206-07 (1962); *A Plan For Auto Insurance Reform*, 33 CONSUMER REPORTS, *supra* note 24, at 9.

cially where injuries are serious, the insurer can simply wait out the injured victim to obtain a more favorable settlement.⁶⁹

In general, the highly abstract standard of liability called "fault" and the indeterminate measure of damages called "general damages" or "pain and suffering" offer rich rewards to the claimant who will lie, the attorney who will inflame, the adjuster who will chisel and the insurance company which will stall or intimidate.⁷⁰

An obvious result is unfair apportionment of benefits and inflated prices of insurance. Another and even more pernicious consequence may be an erosion of public confidence in the private insurance business, the bar, the courts and the law itself.⁷¹

69. See pp. 28-29 *supra*.

70. Daniel P. Moynihan, former Chairman of The Secretary's Advisory Committee on Traffic Safety Research, U.S. Dept. of Health, Education and Welfare, has said:

"The victim has every reason to exaggerate his losses. It is some other person's insurance company that must pay. The company has every reason to resist. It is somebody else's customer who is making the claim. Delay, fraud, contentiousness are maximized, and in the process the system becomes grossly inefficient and expensive."

Moynihan, *supra* note 34, at 76. A Director of the International Academy of Trial Lawyers and former Chairman of the Insurance, Negligence and Compensation Law Section of the American Bar Association, commented as follows:

"There are many problems and abuses which endanger this branch [negligence bar] of our profession. Fraudulent claims; exaggerated claims; the whittling away of defenses in state legislatures by statutory enactments; bold chasing of claimants; unethical doctors; verdicts out of all proportion to the injuries and damages sustained; the use of courtroom tactics which distort and magnify the injuries, mental pain and suffering; and the filing of claims which are known to be groundless."

La Brum, *Quo Vadis*, A.B.A. INS. NEGL. & COMP. L. SECT. PROCEEDINGS 87, 88 (1961). See also KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29, at 3; Dunlop, *Why Your Car Insurance Costs So Much*, TRAFFIC SAFETY, Oct. 1958, at 12; James, *An Evaluation of the Fault Concept*, *supra* note 20, at 396-97; Jones, *Proposed: A New Auto Insurance System*, J. INS. INF., Jan.-Feb., 1969, at 6-7; *The Cost of Casualties*, TIME, June 2, 1967, at 63, col. 2; *Auto Insurance Has No Friends* (editorial), LIFE, Nov. 17, 1967, at 4.

71. See, e.g., J. FRANK, AMERICAN LAW: THE CASE FOR RADICAL REFORM (1969) and materials there cited.

Instability of the Insurance Mechanism

Apart from the outright dishonesty which can infect both sides in the settlement of claims, the vagaries of the fault insurance system lead to other kinds of unstable and anti-social behavior by insurers.

At the heart of insurance underwriting and rating is the process of predicting which classes or categories of policyholders are likely to cause which future losses. With millions of drivers at the wheels of millions of cars; with these cars running into each other, into pedestrians and into all manner of objects thousands of times a day; with the existence and amount of liability for a given accident unknown for long periods in a time of general inflation—it is no wonder that automobile insurers are unable to predict reliably which policyholder is how likely to have how costly an accident.

Facing these uncertainties, automobile insurers thrash around for ways to control their costs, to bring order to a seemingly irrational and unpredictable business environment. It is no wonder that when financial institutions the size of casualty insurance companies begin to thrash around, they can do real damage to their surroundings.

In the effort to control future losses, insurers tighten their underwriting. Insurance companies are large organizations, in which such mass operations as individual underwriting decisions have to be delegated to a large number of employees and agents. For that reason, insurance companies try to standardize the underwriting process and make it routine. They are forever casting about for simple, objective, readily identifiable, present characteristics of an insured that the subordinate underwriter or agent can conveniently use to distinguish a “good” from a “bad” future risk.

On the basis of whatever “objective characteristics” are in vogue at the time, an insurer faced with mounting losses will weed out “bad” risks by whatever methods are at hand—by

refusal to write, by cancellation, by non-renewal and by steep rate increases. Such behavior may be legal and may be quite rational to the insurer, but it can be devastating to the policyholder.⁷² Unfortunately, restrictive underwriting is one of the few ways an insurer can possibly control its business environment under the fault insurance system.

New York's laws against cancellation of policies and against other arbitrary behavior by insurers are at least as stringent as those of any other state.⁷³ New York's arrangement for making automobile insurance available to people who cannot get it in the voluntary market is the most complete in the nation.⁷⁴

But these laws deal only with symptoms. It is certainly sound public policy to suppress obnoxious symptoms, but each time it is done the pressure is increased somewhere else. For decades the regulation of market conduct of automobile insurers has been a Sisyphean process of rolling back one anti-social symptom after another, symptoms of the insurers' understandable and relentless effort to impose some kind of control and predictability upon the fault insurance system.

High Premium Rates

The failure of the fault insurance system to compensate victims adequately would be understandable if the insurance

72. On public dissatisfaction with automobile insurance underwriting practices, see STAFF OF ANTITRUST SUBCOMMITTEE OF HOUSE COMMITTEE ON THE JUDICIARY, *AUTOMOBILE INSURANCE STUDY*, 90th Cong., 1st Sess. 76-87 (1967); N.Y.S. JOINT LEG. COMM. ON INS. RATES, REG. AND RECOD. OF INS. LAW AND REL. STATUTES ANN. REP. 59-87 (LEG. DOC. NO. 10, 1968); N.Y.S. JOINT LEG. COMM. ON INS. RATES AND REG. ANN. REP. 17-60, 75-101 (LEG. DOC. NO. 81, 1961); *A Plan For Auto Insurance Reform*, 33 CONSUMER REPORTS, *supra* note 24, at 9; *How Good Is Your Automobile Insurance?: Part 2*, 27 CONSUMER REPORTS, *supra* note 68, at 204-08.

73. See N.Y. INS. LAW §§167-a, 270-82 (McKinney 1966 and Supp. 1969).

74. See N.Y. INS. LAW §63 (McKinney Supp. 1969).

were cheap. The inefficiency of the system might be tolerable if only a few of the consumer's dollars went into it.

But automobile insurance is expensive. The average premium for the liability insurance whose purchase is required by law is now \$125 a year.⁷⁵ For some one-car families the necessary insurance can cost as much as \$429 a year.⁷⁶

Expensiveness is not an absolute, and whether consumers regard a particular product or service as expensive depends on many factors.

One factor is the value the consumer gets in return for his money. Enough has already been said in this Report about the way the fault insurance system compensates victims, about the way it dissipates the premium dollar and about the kind of behavior it induces in insurance companies and others, to enable the reader to make up his own mind about value.

Another factor in deciding whether something is expensive is the consumer's ability to pay for it. The insurance one buys under the fault insurance system is used to pay somebody else, the unknown future victim. The amount paid will depend in part on that unknown victim's economic circumstances, especially his wage or salary level in the event he is kept from work. But the amounts that may have to be paid for such liability, and hence the premiums charged for liability insurance, do not depend on — indeed often vary inversely with

75. The dollar figure is an approximate statewide average for the \$10,000/20,000/5,000 compulsory liability insurance, derived by Department actuaries from current rates of major rating bureaus and independent companies, weighted according to premium volume. Expensive as it is, the compulsory amount of automobile liability insurance is not enough either to assure victims of full compensation or to protect the vehicle owner against personal liability in a case of serious loss (which may or may not be occasioned by anyone's correspondingly serious "fault"). The Insurance Department has for the last several years recommended legislation to increase the limits on compulsory automobile liability insurance.

76. The dollar figure is for the minimum compulsory insurance, and is the current rate of the largest rating bureau for the highest rated geographical territory and driver category. It does not include any surcharges under "merit rating" plans; in fact, it reflects the bureau's discount for an experienced driver with no accidents or serious traffic violations.

—the economic circumstances of the policyholder or consumer of insurance.⁷⁷

Finally, the price of automobile insurance under the fault insurance system has been going up,⁷⁸ and the prospects are

77. See STAFF OF ANTITRUST SUBCOMMITTEE OF HOUSE COMMITTEE ON THE JUDICIARY, *supra* note 72, at 76-95; *The Workshop Sessions: Summary Report*, 1967 U. ILL. L. FOR. 618, 622-23.

"Under tort liability a person can be called upon to compensate another person for that other person's economic losses. The amount of damages varies with the injured victim's economic status, family situation, etc. For example, a low income earning clerk may disable for life a highly compensated business executive. Here we have a situation where low income persons may have to provide economic redress to another person in a totally different economic class. . . . Since no one knows whom he might injure, every financially responsible person feels virtually compelled to purchase high limits, high premium coverage which is unrelated to his own financial means and circumstances."

N.A.I.C. REPORT, *supra* note 44, at 101-02. The Director of Legislation of the AFL-CIO has testified:

"Working people are among those hardest hit by soaring car insurance costs and arbitrary cancellations. With factories now so widely dispersed and beyond the reach of obsolete public transit systems, their car is for many workers the lifeline to their jobs. But insurance companies can, and all too often do, threaten that lifeline through their ability to withhold insurance, or at least to extract crushing fees for it."

Statement of Andrew J. Biemiller in *Hearings on S. J. Res. 129 Before the Consumer Subcomm. of the Senate Commerce Comm.*, *supra* note 46, at 21. The co-author of *Automobile Accident Costs and Payments* (*supra* note 25) has testified:

"The soaring costs of liability insurance are making automobile ownership impossible for many poor Americans. If they cannot own automobiles, they cannot emerge from the congested cities where public transportation is available and cannot hold jobs at outlying factories. The present system of reparation produces two kinds of victims—those who are inadequately compensated for their injuries, and those who are charged the high premiums required by a wasteful system."

Testimony of Alfred Conard in *Hearings on H. J. Res. 958 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce*, *supra* note 53, at 83.

78. From 1950 to 1970, the average manual premium rates of the largest rating bureau for compulsory automobile liability insurance have been:

Year	Amount	Percent Increase from 1950
1950	\$ 69.63	—
1955	86.98	24.9
1960	108.67	56.1
1965	112.87	62.1
1970	135.60	94.7

for it to continue to go up. All casualty insurance is a pass-through of costs, and automobile liability insurance is a pass-through of costs (*e.g.*, medical care, wages and car repair) which are rising fast.⁷⁹ Moreover, automobile insurance under the fault insurance system is a most inefficient and inaccurate pass-through, adding almost six dollars of operating expenses and misapplied benefits to every dollar in net economic benefits.⁸⁰

The ceaseless rise in automobile insurance premiums is an unpleasant fact, but it is a fact that should be faced. It is a fact that cannot be negated, within the framework of the fault insurance system, by any known regulatory action.

On the record, the Legislature, the Governors and the Insurance Department of New York have done as much as or more than those of any other State to hold down automobile insurance prices at the consumer level. New York was the first State to take account of investment income in automobile insurance ratemaking, and one of the first to approve rate-cutting deviations and independent filings by automobile insurers and to allow the expense savings from group sales of automobile insurance to be passed on to the consumer.⁸¹ And when New York followed the successful example of California and

79. During the same 20-year period that automobile liability insurance rates rose by 94.7% (*supra* note 78), the U.S. Consumer Price Index for medical care rose by 114.4%, and for automobile repairs by 83.1%. U.S. LABOR DEPT., BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX, U.S. CITY AVERAGE AND SELECTED AREAS (monthly releases). During this period, earnings of production workers in manufacturing establishments in New York State rose by 118.4%. N.Y.S. DEPT. OF LABOR, DIVISION OF EMPLOYMENT, EMPLOYMENT REVIEW (Dec. 1969).

80. See note 67 *supra* and accompanying text.

81. For a history of the role of investment income in automobile insurance ratemaking, see N.Y.S. JOINT LEG. COMM. ON INS. RATES, REG. AND RECOD. OF INS. LAW AND REL. STATUTES ANN. REP., *supra* note 72, at 24-25. For a history of deviation filings, see 2 R. BENJAMIN, ADMINISTRATIVE ADJUDICATION IN THE STATE OF NEW YORK, REPORT TO GOV. HERBERT H. LEHMAN 32-34 (1942). Group sale of automobile insurance was approved by the New York Insurance Department in November 1968. N.Y.S. INS. DEPT., MONTHLY BULLETIN, NOV. 1968.

enacted a competitive rating law, it added unique regulatory safeguards and prohibitions against price-fixing conspiracies markedly stronger than the federal antitrust laws.⁸²

Still the fact remains that, under the fault insurance system, automobile insurance premiums are going up and up, a movement unaccompanied by any improvement in value or in the relationship of insurance prices to consumers' ability to pay.

Rising Tensions Within the System

In studying the present system in theory, we saw that fault law took shape before the automobile was invented. The original purpose of the law was to make wrongdoers pay for their wrongdoings and, where such a wrongdoer could be found, to shift loss from his innocent victim to him.⁸³

With the coming of the automobile, drivers began to buy insurance to indemnify themselves in the event they should have to pay, pursuant to fault law, for any damage they might wrongfully do when behind the wheel.⁸⁴ The original purpose of the insurance was to reimburse or indemnify the wrongdoer, and then to distribute the amount of the reimbursement across a very large number of other people, the policyholders.

The conflicting purposes of the law and the insurance affecting automobiles are at the root of many of our problems with the fault insurance system.⁸⁵

82. See N.Y. INS. LAW §§175-180 (McKinney Supp. 1969).

83. See pp. 7-9 *supra*.

84. See C. CROBAUGH & A. REDDING, *supra* note 11, at 280-81; G. MICHEL-BACHIER, *CASUALTY PRINCIPLES* 12 (1930); James, *History of the Law Governing Recovery in Automobile Accident Cases*, *supra* note 10, at 321, 323-24.

85. See pp. 13-14 *supra*. The Economics Editor of *Consumer Reports* has said: "Insurance is based on a good social principle. It is a device permitting the members of a community to pool their risks so that a loss that could not be borne by any single member alone can be borne easily by the community as a whole. The social principle collides with the legal principle of negligence liability, or at least the two do not sit well together. If there is a wrongdoer, the law

But that is not the end of the story. For a third purpose, or a third expectation about the fault insurance system, has developed which is at conflict with both of the other two — compensating victims. It is not new. It has been building up for a long time and is still building.⁸⁶ It has not always been announced as a theory, but its advance is clear enough from events, which were as follows.

Originally automobile insurance was indemnity insurance, reimbursing the policyholder only if he actually had to pay. The indemnity insurer got off if the policyholder was “judgment-proof,” that is, too poor for the victim to bother suing or too poor to pay a judgment.⁸⁷

Soon the states, including New York, began to require by law that automobile insurers pay when their policyholder was liable, regardless of whether he had actually paid damages and regardless of whether a judgment against him could be collected.⁸⁸ The indemnity policy became a liability policy, thereby extending compensation to the victim of a “judgment-proof” driver.

The indemnity-liability policy began as a protection for the driver-policyholder himself against liabilities he might incur due to his own conduct. Later the insurance came to be

says he must pay for any injury he has done to persons or property. That's the legal principle. But when we get behind the wheel, we are all potential wrongdoers—or as lawyers elegantly say, ‘tort-feasors’. Therefore, we have a community of risk, which we can spread among ourselves by insurance, but only by distorting the social principle. The community here joins together, not to ease the victim's loss but to protect the wrongdoer. Any money paid to the victim is incidental. . . .”

Klein, *A Consumer Looks at the Complete Personal Protection Plan for Automobile Insurance*, Address Before the American Insurance Ass'n, May 20, 1969.

86. See, e.g., Kenney, *The Slow But Steady Trend Toward Automobile Liability Compensation Insurance*, U.S. INVESTOR, May 3, 1965, at 20, col. 1; Kimball, *Insurance and the Evolution of Public Policy*, *supra* note 11, at 127, 131-39.

87. See C. BRAINARD, *supra* note 11, at 132-33; 2 F. HARPER & F. JAMES, *supra* note 8, §13.6, at 777-78.

88. See 2 F. HARPER & F. JAMES, *supra* note 8, §13.6, at 777-78; N.Y. INS. LAW §167 (1) (a), (b) (McKinney 1966).

taken out by the vehicle owner, to pay for liabilities incurred by anyone driving the car with his permission.⁸⁹ What had been an insurance contract on the driver-policyholder alone became an insurance contract on other drivers. The effect was to give a source of compensation to the victims of the non-owner, otherwise uninsured, driver.

Even after these developments, there were still many accident victims without a source of compensation, because automobile liability insurance was not widespread. A succession of laws ensued, with the avowed purpose of assuring that there be a solvent party responding to every automobile liability claim.

First, many States passed financial responsibility laws requiring that a defendant, after a liability judgment had been taken against him, give proof of adequate insurance or other resources before he would be allowed back on the road.⁹⁰

Later these financial responsibility laws were strengthened to require the showing of financial security right after an accident, rather than only after judgment.

Even the tightened financial responsibility laws allowed on the highway some drivers, such as those who had not had their first accident, who might not be able to pay a liability judgment. So some states passed compulsory insurance laws, which made proof of insurance or other financial security a prerequisite to registering a motor vehicle. The movement began with respect to commercial vehicles, and was later extended, by New York and two other states, to private passenger cars as well.⁹¹

89. See 2 F. HARPER & F. JAMES, *supra* note 8, §13.6, at 777-81; N.Y. VEHIC. & TRAFFIC LAW §388 (McKinney 1960).

90. See Grad, *Recent Developments In Automobile Accident Compensation*, 50 COLUM. L. REV. 300, 305-08 (1950); Kimball, *Insurance and the Evolution of Public Policy*, *supra* note 11, at 134.

91. See Grad, *supra* note 90, at 308-11; Kimball, *Insurance and the Evolution of Public Policy*, *supra* note 11, at 134-35; N.Y. VEHIC. & TRAFFIC LAW §§310-321 (McKinney 1960). The two other states are Massachusetts and North Carolina.

Even after liability insurance became compulsory, some victims were without a solvent defendant to claim against. Here was found the victim of an illegally uninsured motorist or of a stolen car or hit-and-run driver. So the insurance companies added uninsured motorist endorsements and, to close the gap even further, New York established the Motor Vehicle Accident Indemnification Corporation.⁹²

To close another gap in sources of compensation, New York and a few other states set up guaranty funds to pay automobile liability claims where the negligent driver was indeed insured, but insured with a bankrupt insurance company. Insolvency protection assured the victim a source of compensation regardless of the fate of the insurance company.⁹³

Another development in this same direction has been the overlaying of first-party, no-fault coverages, such as collision and medical payments, upon the basic automobile liability coverage.⁹⁴

Clearly all these developments are inconsistent with the theory of fault law and the theory of liability insurance. What has happened, and is continuing to happen, is that a new theory has taken hold — that victims should be compensated — and the fault insurance system is being distorted further

92. See C. BRAINARD, *supra* note 11, Ch. 9; C. KULP & J. HALL, *supra* note 11, at 332-45. See also N.Y.S. INS. DEPT., 97TH ANN. REP. OF THE SUPT. OF INS. 8-10 (1956); N.Y.S. INS. DEPT., 99TH ANN. REP. OF THE SUPT. OF INS. 21-26 (1958). The Motor Vehicle Accident Indemnification Corporation was created in New York in 1958. N.Y. SESS. LAWS, Ch. 759, §4 (1958). For a discussion of the current provisions of the law, see note 137 *infra*.

93. See C. KULP & J. HALL, *supra* note 11, at 1017-19; N.Y. INS. LAW §§333, 334 (McKinney Supp. 1969).

94. New York Insurance Department statisticians estimate that, of all private passenger automobiles registered in this State and insured outside the assigned risk plan, about 75% now carry fire, theft and comprehensive insurance, 70% now carry medical payments insurance and 50% now carry collision insurance. All three are optional, first-party coverages which pay benefits without regard to fault. See also C. BRAINARD, *supra* note 11, Chs. 10, 11; C. KULP & J. HALL, *supra* note 11, at 327-32, 345-65.

and further to implement the new theory.⁹⁵ More and more we are trying to run a compensation system in a fault liability framework.⁹⁶

95. This tendency to measure the fault insurance system, less in terms of its own principles and more in terms of the modern need to compensate victims and to allocate costs rationally, is evident from the Congressional resolution creating the U.S. Department of Transportation study (*supra* note 26):

"Whereas Congress finds that suffering and loss of life resulting from motor vehicle accidents and the consequent social and economic dislocations are critical national problems; and whereas there is growing evidence that the existing system of compensation for such loss and suffering is inequitable, inadequate and insufficient and is unresponsive to existing social, economic and technical conditions; and whereas there is needed a fundamental re-evaluation of such system, including a review of the role and effectiveness of insurance and the existing law governing liability. . ."

Pub. L. 90-313 (May 22, 1968) 82 STAT. 126 (S. J. Res. 129). Franklin J. Marryott, former Vice President of the Liberty Mutual Insurance Company, and a leading defender of the fault insurance system, has said:

"The trend is in the direction of providing victims of accident or misfortune some compensation for loss regardless, or almost regardless, of the question of fault. . . [Public attitudes] reflect an increasing determination to find some way to pay the victim for at least part of his loss and a lessening of the concern about not paying those at fault and not imposing the costs upon those free from fault. The old morality that had as its premise that only wrongdoers should be punished, and that any degree of fault on the part of the claimant would bar his recovery of damages, has been crumbling. It is fighting a losing battle with the quest for security."

Marryott, *The Tort System and Automobile Claims: Evaluating the Keeton-O'Connell Proposal*, 52 A.B.A.J. 639, 643 (1966).

96. Now we can fully appreciate the absurdity of the notion that the fault insurance system is a "deterrent" to bad driving. Earlier we saw that, taken just as a theoretical proposition, the notion of insured civil liability as a deterrent to unsafe conduct was not plausible. See pp. 12-13 *supra*. The notion is a vestige of old thinking about fault law, before liability insurance. Now over 99% of New York cars are insured (see note 20 *supra*), and all that is possibly left of the "deterrence" argument under the fault insurance system is that insurance company underwriting and rating practices will cause the bad drivers to be denied insurance, to have their insurance cancelled or to have their rates go up. Even in this attenuated form the argument is without substance. It has, in effect, been overwhelmed by the very steps society has taken to expand compensation to victims, or to protect consumers against harsh actions by insurers. Insurers cannot cancel policies for accident involvement, even if the policyholder was adjudged at fault. People who cannot get insurance in the normal market can obtain it through the assigned risk plan, again without regard to fault. Rate differentials, being matters of prediction and not recoupment, vary according to many factors (such as place of residence, age and car use) that have nothing to do with the individual policyholder's driving record. Some insurance companies do indeed use "merit rating"

The Futility of Palliatives

Each of the steps we have just recounted was reasonable and in the public interest when it was taken. More such steps are constantly being recommended. But by proceeding on this patchwork basis we do nothing about the fundamental, unbridgeable divergence of the principles underlying the fault insurance system in practice — fault liability, indemnity insurance and compensation for victims.

That is why, every time we close a gap or enrich compensation, and every time we cover up some symptom of instability in the insurance mechanism, we make the fault insurance system more cumbersome and more expensive. That is why the many current proposals to ameliorate one or another of the defects in the system, without coming to grips with its fundamental illogic and perversity, are bound to fail. In trying to patch up one defect, they will inevitably make other defects more than commensurately worse.

An example. It is sometimes proposed that disputed automobile accident claims be decided by arbitration.⁹⁷ The purpose is to ameliorate the delay and court congestion which we have seen in the fault insurance system. The proposals proceed

plans which are sometimes loosely thought of as varying one's premium rates according to the quality of one's driving. But even the merit rating plans do not depend upon fault law. Rather, premium surcharges and discounts are based on accident involvement. With a few exceptions for broad and objective categories, the merit rating plans do not significantly turn on legal fault or accident severity.

97. See, e.g., CONN. INS. DEPT., A PROGRAM FOR AUTOMOBILE INSURANCE AND ACCIDENT BENEFITS REFORM 14-16 (1969); DEFENSE RESEARCH INSTITUTE, RESPONSIBLE REFORM: A PROGRAM TO IMPROVE THE LIABILITY REPARATION SYSTEM 14-17 (1969); COMMITTEE ON AUTOMOBILE ACCIDENT REPARATIONS, REPORT TO THE EXECUTIVE COMMITTEE OF THE NEW YORK STATE BAR ASS'N 10 (1970). The current proposals apply only to small claims below a stated dollar amount and are mandatory only with respect to initial submission of the dispute to arbitration. The arbitrators' decision is not binding on the parties, and for constitutional reasons (the jury trial guarantee in N.Y. CONST., art. 1, §2) probably could not be made binding. A party dissatisfied with the arbitrators' decision can "appeal" to the courts (after paying the arbitration costs) for a full re-trial of the dispute.

from the mistaken assumption that court congestion is the cause, rather than the symptom, of what is wrong with the fault insurance system.

The arbitration proposals are up against a dilemma which they can never resolve. To the extent they apply only to small claims, as do all the current proposals, they would help precisely those claimants who already do best under the fault insurance system, and would be far from certain to reduce court congestion in this State.⁹⁸ Because the arbitrators' decisions are not binding on the parties, as is the case with all the current proposals, the same result would follow even in the range of claims within the arbitrator's jurisdiction — the smaller claim, already overcompensated, would be closed by arbitration; the larger claim would end up in court.⁹⁹ But

98. Arbitration is, under any of the proposals, available only for relatively small claims, e.g., for claims under \$3,000. These claims are the ones that the fault insurance system handles fastest and most generously. See pp. 20, 26-28 *supra*. Small claim arbitration would not appear capable of drawing cases away from the courts in this State, because (partly due to the known existence in every case of \$10,000 of compulsory liability insurance) the plaintiffs in most personal injury lawsuits here demand more money than the dollar limit on the arbitrator's jurisdiction under any arbitration proposal of which we are aware. See *Report of the Committee on State Courts of Superior Jurisdiction, Variations On the Pennsylvania System: Partial Elimination of Jury Trials in Civil Cases Through Compulsory Arbitration Before Panels of Lawyers*, 22 RECORD OF N.Y.C.B.A. 638, 640 (1967). New York City, where court congestion and delay are particularly severe, already has a Small Claims Part of the Civil Court for the rapid and informal disposition of small claims generally. N.Y. City Civ. Ct. Act, §§1801-1810 (McKinney Supp. 1969). Indeed, this New York City small claims court disposes of more cases every year than the "model" arbitration procedure in Philadelphia has in ten years. See 14th N.Y.S. JUD. CONF. ADMIN. BD. ANN. REP. 236 (1969); *Arbitration: The Philadelphia Story*, J. AMER. INS., Sept-Oct. 1969, at 2.

99. In the larger cases it is worthwhile to the dissatisfied party to take the trouble and expense of "appealing" the decision by starting over again in court. See Rosenberg & Schubert, *Trial By Lawyer: Compulsory Arbitration of Small Claims in Pennsylvania*, 74 HARV. L. REV. 448, 467-68 (1961). One study concludes that most arbitration decisions in cases involving more than \$2,000 would be almost automatically "appealed" by one party or the other. See *Report of the Committee on State Courts of Superior Jurisdiction*, *supra* note 98, at 640-41.

Two careful studies of existing small claims arbitration arrangements elsewhere have concluded that they would not help any but the smallest cases. The Association of the Bar of the City of New York study concluded that the effect of arbitration would be:

"(a) to throw back onto the courts the very congestion sought to be avoided, at an added cost to the public, (b) to save no time

to the extent arbitration were extended to more and larger claims, the result would be that more automobile accident victims — for no reason except that they are so numerous — would have been relegated to a second-class imitation judiciary.¹⁰⁰

In short, while arbitration is useful in other areas, it is not suited to handling automobile accident claims in this State.¹⁰¹ It would bring serious problems in return for a chance at a

and to cost more money for the claimant who is successful at arbitration, but who must thereafter ride out an appeal and bear the expense of having his case tried a second time, and (c) to prevent the small or indigent claimant, due to costs and delays, from appealing or from ever getting a trial before a court."

Report of the Committee on State Courts of Superior Jurisdiction, supra note 98, at 641. Similarly, the Columbia University Project for Effective Justice concluded:

"There is no evidence that the scheme would work in larger cases, where the cost of returning to court either would not be out of proportion to the possible yield or would have to be set so high that it might be struck down on state constitutional grounds as an indirect prohibition of trial by jury."

Rosenberg, *Court Congestion: Status, Causes and Proposed Remedies*, in *THE AMERICAN ASSEMBLY, THE COURTS, THE PUBLIC AND THE LAW EXPLOSION* 29, 52 (1965).

100. Studies of existing arbitration schemes in operation suggest that the arbitration forum is a "second-class" dispenser of justice, inferior to the courts in competence, dignity and regularity. "Far-reaching social and political considerations negate any proposal which would relegate this large segment of society [small claim litigants] to a system which is open to attack as 'second-class justice'." *Report of the Committee on State Courts of Superior Jurisdiction, Partial Elimination of Jury Trials in Civil Cases—New York Simplified Procedure versus the Pennsylvania System*, 18 *RECORD OF N.Y.C.B.A.* 615, 617 (1963). See also *INSTITUTE OF JUDICIAL ADMINISTRATION, COMPULSORY ARBITRATION AND COURT CONGESTION—THE PENNSYLVANIA COMPULSORY ARBITRATION STATUTE 6, 10-11* (1956); A. LEVIN & E. WOOLLEY, *DISPATCH AND DELAY: A FIELD STUDY OF JUDICIAL ADMINISTRATION IN PENNSYLVANIA* 52 (1961); Marshall, *Arbitration: A Report of First Impression*, 22 *SHINGLE* (publication of the Philadelphia Bar Ass'n.) 21, 22 (1959); Comment, 2 *VILL. L. REV.* 529, 537-38 (1957). And the arbitration forum has a tendency to yield different results than would judge and jury. Rosenberg & Schublin, *supra* note 99, at 466 (reporting that almost one-third of the cases surveyed came out differently to a significant degree). Nor does it appear that these compromises as to the quality of the forum even conserve the resources of the legal profession. It takes, on the average, nearly three arbitration hearings and the participation of eight attorneys to avoid one trial. Rosenberg & Schublin, *supra* note 99, at 462.

101. See *A.B.A. REPORT, supra* note 43, at 54-61; Aksent, *Arbitration of Automobile Accident Cases*, 1 *CONN. L. REV.* 70 (1968).

slight reduction in one of the kinds of delay in the fault insurance system.

Another example. It is sometimes proposed that the defense of contributory negligence, which prevents a plaintiff from being paid if he, as well as the defendant, was at fault, be replaced with a rule of comparative negligence which would reduce the plaintiff's recovery without barring it altogether.¹⁰² The proposal is aimed at one of the two main rules of fault law that exclude victims from compensation — the other, and more serious, being the requirement that someone else be proved negligent before the victim can be paid. Comparative negligence would at least qualify for compensation some victims who cannot get it now, and that much is good.¹⁰³ But it would do so by making the process of deciding claims more complicated than it is today.¹⁰⁴ It would increase the inefficiency of the fault insurance system. To the extent it increased benefits to victims, it would do so at a disproportionate cost to consumers in higher premiums.¹⁰⁵

102. See, e.g., A.B.A. REPORT, *supra* note 43, at 75-77; CONN. INS. DEPT., *supra* note 97, at 17-19; DEFENSE RESEARCH INSTITUTE, *supra* note 97, at 23. See also note 13 *supra* and materials there cited.

103. The increase in numbers of compensated victims would likely be smaller than is commonly anticipated, because even today both juries and insurance adjusters often apply a rough-and-ready rule of comparative negligence. See, e.g., P. MAGARICK, SUCCESSFUL HANDLING OF CASUALTY CLAIMS 17-18 (1955); Benson, *Can New York Afford Comparative Negligence?*, 27 N.Y.S.B. BULL. 291 (1955).

104. Comparative negligence gives an illusion of mathematical precision to what is, at best, a highly imprecise judgment as to blameworthiness—with the judgment of *relative* blameworthiness to be, by definition, even more perplexing. The Columbia University Project for Effective Justice conducted a survey of the effects of introducing comparative negligence in a state (Arkansas) whose overload and delay problems are less serious than New York's, and concluded that potential litigation was increased and the determination of damages became more difficult. Rosenberg, *Comparative Negligence in Arkansas: A "Before and After" Survey*, 13 ARK. L. REV. 89, 108 (1959).

105. See pp. 34-37 *supra*. For some of the other difficulties likely to be encountered under a comparative negligence rule, see Benson, *supra* note 103; Body, *Comparative Negligence: The Views of a Trial Lawyer*, 44 A.B.A.J., 346 (1958); Harkavy, *Comparative Negligence: The Reflections of a Skeptic*, 43 A.B.A.J. 1115 (1957); Varnum, *Comparative Negligence in Automobile Cases*, 24 INS. COUNSEL J. 60 (1957).

Even those victims who would receive compensation for the first time under a comparative negligence rule would have their compensation cut down by that same rule. Comparative negligence concedes the validity of the principle that even negligent victims should be paid, and then neither implements the principle fully nor accepts the even more obvious principle that all non-negligent victims should be paid.

Comparative negligence, like other palliatives, is not without merit. It is just a very bad bargain for accident victims and insurance consumers.

One final example, although there are many more. It is sometimes proposed that some medical and income loss be paid to all accident victims on a first-party, no-fault basis, with such payments to be set off against any subsequent amount recovered by the victim from a negligent party's insurer.¹⁰⁶ What these proposals amount to is an overlay of no-fault benefits on top of the fault insurance system. Their purpose is to lessen the delay and incompleteness which we have seen in the fault insurance system. But the "overlay" proposals would do so in a way that would increase the inefficiency of the overall reparations system and that would have to raise premium rates substantially.¹⁰⁷

106. See, e.g., W. BLUM & H. KALVEN, *supra* note 47, at 84; CONN. INS. DEPT., *supra* note 97, at 6-8; DEFENSE RESEARCH INSTITUTE, *supra* note 97, at 11-13; Calif. State Bar Ass'n, *Report of Comm. on Personal Injury Claims*, 40 J.S.B. CALIF. 148, 153-54 (1965); COMMITTEE ON AUTOMOBILE ACCIDENT REPARATIONS, *supra* note 97, at 6-9.

107. Every reparations system involves frictional or operating costs (*see* note 17 *supra*), and the overlay of a first-party, no-fault "system" on top of the fault insurance system would just make the consumer pay to operate two reparations systems instead of one. Moreover, an overlay of first-party benefits on the fault insurance system would also require consumers to pay for special administrative costs resulting from the interaction of the two "systems," mainly in the process of setting off first-party benefits against liability awards. The most extreme examples of expensiveness among the "overlay" proposals are those that would have the first-party, no-fault benefits be in addition to any benefits received through the fault insurance system, that is, without even a set-off of first-party, no-fault benefits against any subsequent liability award. See, e.g., Fuchsberg, *Lawyers View Proposed Changes*, 1967 U. ILL. L. FOR. 565, 571. Even apart from their tendency to subsidize litigation, these proposals would lead to virtually the largest imaginable duplication of benefits and increase in premiums.

Beyond the serious practical defect of expensiveness, the "overlay" proposals are up against a dilemma which they can never resolve. To the extent they place low limits on the no-fault benefits, as do all the current proposals, they would aggravate the misallocation of benefits — paying too much on small losses and too little on large losses — that is already one of the cruelest flaws in the fault insurance system.¹⁰⁸ To the extent the "overlay" proposals provide generous benefits on a first-party, no-fault basis, they destroy anything that might be left of a reason for continuing to have the fault insurance system at all, for the most basic principles of fault law (shifting losses to negligent defendants and denying compensation to negligent plaintiffs) would have been completely done away with by the combination of liability insurance and first-party benefits.

In short, the "overlay" proposals are a dramatization of the conflict among the three main elements of, or expectations about, the contemporary fault insurance system—fault law liabilities, insurance against the liabilities, and compensation of victims.

Conclusion

In examining the fault insurance system in practice, we have seen its inherent or theoretical defects magnified many times by the practical burden of a large number of claims, and we have seen practical failings even beyond those to which the theory of the system alerted us.

108. With low limits on its first-party, no-fault benefits, an "overlay" proposal would do little for the seriously injured victim with large medical expense and wage loss. But such a proposal would do a lot for the victim with slight losses. It would pay him in full, while leaving him free to take a chance on getting even more through the fault insurance system. The "overlay" proposal would thereby especially improve the bargaining position of the victim with a small loss, enabling him to get from the fault insurance system, and its supporting consumers, even greater overcompensation than he gets now. See pp. 26-28 *supra*. With a low limit on no-fault benefits, an "overlay" proposal at once acknowledges the validity of the goal of compensating all victims and then draws back from pursuing that goal effectively.

The practical defects of the fault insurance system are deeply rooted in the basic contradictions of the "system," and in the conflict between what the various warring elements of the "system" were intended to do and what they are now expected to do.

The only prospect for the present system is more delays, higher premiums and worse misallocations of resources.

Further attempts to modernize the fault insurance system by tinkering with it, while leaving its essentials intact, are sure to be expensive and self-defeating. The operators of the present system would just be buying themselves time with other people's money.

The time has come to make a fresh start, to ask ourselves what we want an automobile accident reparations system to do, and then to get a system that will do it.

CRITERIA FOR A GOOD SYSTEM

As we move from criticizing the present system to designing a new one, we need first to be precise about what we want an accident reparations system to do.

For whose benefit should automobile insurance exist? Whose interests should be paramount in any new system?

Before trying to answer those questions, let us pause to make sure they should be asked. Why have criteria? Why try to design a system? Because failing to ask these questions, and to act in accordance with the answers, has got us where we are today. The present fault insurance system, however tormented in theory and vicious in practice, is not the product of anyone's evil design. It is the result of drift, happenstance and improvisation. We can no longer afford, in either economic or human terms, not to ask the right questions.

For whose benefit, then, should automobile insurance exist?

It is arguable, and has come to pass under the fault insurance system, that any such system should consider above all the interests of those who operate it — the insurance companies, lawyers, adjusters, insurance agents and insurance regulators. It is arguable, and has come to pass under the fault insurance system, that the essential interests of those who operate the system are inherently opposed to the interests of those who deal with the system from outside — that conflict and antagonism are inevitable and the only question is who is winning.

We reject both those views.

As a matter of sound public policy, we believe that automobile insurance should primarily serve (i) accident victims, (ii) consumers of automobile insurance, and (iii) citizens generally. But that does not mean the interests of those who operate the system must be trampled. For it may be possible, in designing a system, to narrow the areas in which conflict

and antagonism of interest are indeed inevitable, so that the interests of those who operate the system may be accommodated to the dominant interests of victims, consumers and society generally.

Obviously victims, consumers and citizens are not three mutually exclusive groups. We are all members of the third, largely members of the second and occasionally members of the first.

But by directing attention at victims, consumers and citizens, we can best see that there are three major, valid points of view to be considered.

The victim is the person injured in an automobile accident, and his overriding concern is what is to become of him. Will he get the medical care he needs? Will he get money to cover his losses and expenses? How will the insurance system deal with him in his adversity?

The insurance consumer is the policyholder, the fellow who pays the premiums. He may or may not ever have an accident and may or may not have occasion to view the system from the victim's perspective. But in any event he is dealing with the system, holding its contract, paying his money into it. Will he be able to get insurance? How much will he have to pay, and can he afford it? How will the system treat him after he gets insurance? And how will it treat him, as a policyholder, after he has an accident?

Considering the interest of citizens generally is a way of reminding ourselves that society at large is affected by what is done with the system of handling automobile accident costs. Some citizens are neither accident victims nor insurance consumers. Granted that everyone is potentially one or both. But, more important, we all have an interest in how well or badly the great institutions of our society function, for we cannot quarantine them and their conduct ramifies through the community. Can a system of handling automobile accident costs

bring safer driving? Will it improve respect for law? Will it help the courts work better? Will it lift burdens from people who can least bear them?

In most respects the interests of victims, consumers and citizens generally coincide. Many qualities of a good accident reparations system are desirable from the standpoints of all three. Other qualities are desirable from the perspective of one of the groups and make no difference to the others. Sometimes, however, the interests of victims, consumers and citizens are actually or potentially in conflict. There, interests have to be balanced and choices made.

Throughout we will never be far from the question of priorities. For we are balancing interests, deciding which needs should be met first and most fully, choosing which goals should be paramount, allocating resources which are not unlimited. Deciding on priorities is never easy, for it evicts our minds from the dream world where every good wish can be fulfilled. But if we let priorities slide, all we do is forfeit our chance to influence what will happen to us. Making our priorities clear is worth the effort.

From the combined points of view of the accident victim, the insurance consumer and citizens generally, a system of handling automobile accident costs should be, first of all, humane and fair. These two ultimate human criteria define the result or product to be sought from any new system. They have guided our detailing of the characteristics of the operation or process of a good new system — the specific criteria set out below. Considerations of humanity and fairness will also guide us when, in designing a new system, desirable operating characteristics or criteria have to be balanced and difficult choices made.¹⁰⁹

109. There are relatively few discussions of criteria and priorities in automobile accident reparations. For a good exception, see R. KEETON, *VENTURING TO DO JUSTICE*, Chs. 8 & 9, especially at 136-43 (1969). See also Marryott, *supra* note 95, at 640.

To be most humane and fair in its results, a system of handling automobile accident costs should have the following specific operating characteristics:

- It should compensate all victims.
- It should pay generous benefits.
- It should be efficient.
- It should have low premiums.
- It should internalize accident costs to activities causing accidents.
- It should pay benefits fast.
- It should pay benefits periodically, rather than in a single lump sum.
- It should be reliable.
- It should be stable.
- It should help prevent accidents and reduce accident costs.
- It should give consumers real choice and influence.
- It should help the courts and other related institutions work well.
- It should be operated by private enterprise.

Compensation for All Victims

From the point of view of the accident victim, any new system should pay him. It should pay him, whoever he is. It should pay benefits to all victims.

Every accident cost is borne by someone. If the compensation system ignores certain victims, it does not thereby make their losses go away. A victim denied compensation by the automobile insurance system just has to get the money somewhere else. Whether he gets it from savings, family, friends, private charity or public assistance, his accident cost is no less, and it can be inflicted upon the victim and others in a most disruptive and demeaning way.

Once the accident has happened, the big question is whether the victim is to be paid or not. He may be a good or bad driver, irresponsible or just unlucky, but there he is. The victim's interest is clear, and neither consumers nor society at large would seem to have any reason to impede the victim's return to normal life.

One corollary that is easy to overlook is the possible catastrophic effect of the accident on the other fellow, the driver or owner of the car that caused the injury. One can be wiped out by an accident without being physically a victim. If the victim's loss is merely shifted to the other fellow, and not distributed, the effect may be to ruin the other fellow.

Under the fault insurance system, the other fellow is protected by liability insurance. The fault insurance system is right in protecting him. True, we criticized the fault insurance system for protecting the other fellow better than the victim. But any new system should continue to protect the other fellow. No one should be financially destroyed by his share of the cost of accidents.

Generous Benefits

Again from the point of view of the accident victim, once the compensation system has undertaken to pay for his loss there is no reason for the system to stop short of paying for all of his loss.

What is a loss? That question involves priorities and the balancing of the interests of victims and consumers, points to be taken up later. But the question has more to it than that. Any system of handling accident costs gives out economic benefits. It distributes money after the accident. It does not erase the accident or avenge a wrong. For purposes of using money to compensate accident victims for loss, loss has to mean, first and foremost, monetary or economic loss.¹¹⁰

110. For a discussion of the present relationship between insurance payments and economic loss, see pp. 25-29 *supra*.

But there should be no qualitative distinction among kinds of economic loss, which is another way of saying that the scope of benefits should be unlimited.

Similarly, leaving aside for the moment the matter of balancing benefit levels and premium levels, there should be no limit on the amount of loss which is compensable. A loss is no less a loss by being a big loss. Quite the contrary. Losses are not limited, and benefits should not be. There are more humane ways to economize.

But there is real question whether an economic loss already repaid or repayable from another source is still a loss. Certainly it is less urgent.

Priorities among kinds of payment must indeed be identified, if we are to balance the interest of victims in large payments against the interest of consumers in low premiums. In the allocation of economic benefits, net economic loss should have a high priority, far higher than non-economic items and far higher than economic losses already repaid from another source.

Efficiency

From the point of view of both the victim and the consumer, any new system should be efficient.

The transfer of automobile accident costs should be made by a mechanism that gets to the victim as much as possible of the money that is paid into the mechanism. In the eyes of the victim and the consumer, money that sticks to the mechanism and any new costs generated by the mechanism are wasteful.

To the victim, increased efficiency means more money available for benefits. To the consumer, increased efficiency means lower premiums.

To the extent that a system is made more efficient, it becomes possible either to increase benefits while holding premiums constant, or to reduce premiums while keeping benefits constant, or to do some combination of the two.

There may be perfectly good reasons for an efficient system to have either low benefits and hence low premiums or high benefits and hence high premiums. That is a matter of balancing valid interests. But there is no excuse for the system not to be efficient, as long as we reject the notion that the system exists for the benefit of those who operate it.

Low Premiums

From the viewpoint of the consumer of insurance, any new system should be inexpensive at the consumer level. Premiums should be low.

How low the premiums should be involves, again, a question of priorities. Low premiums are the consumer's analogue of the victim's generous benefits. How low premiums can be will also depend on how much can be saved by improving efficiency, since that will disclose how much will be available for enrichment of benefits and reduction of premiums.

How low a premium is "low," like the question of how high a premium is "expensive," asked earlier about the fault insurance system, depends partly on the value of what the consumer gets for his money and partly on his ability to pay.

The value given by any system will concern all the criteria for a good one. The relationship to the consumer's ability to pay would seem to turn on having the benefits payable under an insurance policy bear some relation to the policyholder's own economic circumstances, since premium levels under any policy are related to benefit levels.

Internalization of Costs

From the point of view of victims, consumers and citizens generally, an activity that generates costs should bear those costs.¹¹¹ It is a matter of sound economic resource allocation as well as of elementary fairness.

111. For discussions of internalization of accident costs, or "general deterrence," see G. CALABRESI, *THE COSTS OF ACCIDENTS*, *supra* note 19, at 68-77, 144-50, 244-53, and the articles by the same author (*see* note 20 *supra*).

If the added cost of safety measures or accident compensation is added onto the price which the consumer pays for the product or service involved, then, in keeping with the theory of a free market, the consumer is best able to make an intelligent choice of whether and how much of the product or service to buy. Only if the costs of a product or activity are thus internalized or reflected in its market price will a free market be able to allocate resources well.

From the viewpoint of society at large, the accident costs of driving should be internalized to the activity of driving. Especially where the driving population is significantly different from the total population and where alternative modes of transportation are available, motoring should pay its way.

For the free market to do its work, these accident costs should be internalized to the activity of motoring in a visible way, one that shows on the price tag. Leaving victims uncompensated from any source, while it might accomplish a grisly kind of "internalization," would not add accident costs to the price of motoring in a way visible to the consumer in a free market. Like the fault insurance system, it would amount to stronger market deterrence to victims than to careless drivers. The accident costs of motoring should thus be internalized to the activity of motoring through some sort of cost distribution or insurance mechanism, one that makes the cost visible before, rather than after, the individual decides whether, when and how much to engage in the activity.

Internalization of costs is quite consistent in principle with efficiency and low premiums. The concept concerns distribution of the costs of accidents, not the loading on of extraneous costs or operating expenses. It is a principle opposed to subsidies, either way. It is not a euphemism for soaking the driver.

Rigorous adherence to resource allocation theory would call for the costs of automobile accidents to be fully internalized to the activity of motoring through the automobile insurance system. It is a sound long-term goal.

The interest of consumers in low premiums and the interest of victims in the fullest compensation of net economic loss call for eliminating the duplication of benefits between automobile insurance and other sources of compensation. That leaves the question which source should be primary or should be drawn upon while the others stood aside.¹¹²

The other sources of compensation derive from different laws and traditions, and involve a variety of private and governmental insurance mechanisms generally more efficient than automobile insurance. As a practical matter and in the short run, it would be undesirable, and impossible, to make those other sources stand aside. Internalization should yield to the goals of efficiency, low premiums and generous benefits.

But if, in order to end duplication of benefits promptly and efficiently, automobile insurance is made secondary to other sources, it should be done in a way that leaves the greatest range of choice to consumers. Automobile insurance should be free to compete with the other sources. If automobile insurance became efficient and otherwise satisfactory enough in the future, it could become, by the free choice of consumers, the primary source of automobile accident reparations.

Internalization is also a useful yardstick for allocating accident costs within the motoring public as among different categories of drivers. If certain categories of motoring can be singled out as having a special relationship to accident costs—either because motorists in such a category cause unduly large accident costs or because they are particularly well situated to

112. By "primary" source of compensation is meant the one source among available sources of compensation which alone pays the initial loss benefits, while the other sources (*i.e.*, "secondary" sources) stand aside, paying compensation in turn only for net loss left uncompensated after the primary source has been exhausted. Where none of the available sources of compensation for a particular loss stands aside for another, such sources are designated, in this Report, as overlapping or duplicate sources of compensation and not as primary sources. For a discussion of duplication of benefits, see pp. 30-32 *supra*.

reduce or otherwise deal with accident costs — then it would seem fairer to consumers as a whole that the accident costs of each such category of motoring be charged to that category rather than to all consumers equally.

Prompt Payments

From the point of view of the victim, any system that begins to deliver benefits quickly can reduce human suffering, hardship and permanent disability.¹¹³

Many of the long-term costs of personal injury in automobile accidents could be avoided by prompt and complete medical attention and rehabilitation if the necessary funds were available in time.¹¹⁴

An injured person who needs medical help usually needs it beginning right after the accident. Rehabilitation procedures — which help an injured person resume normal and productive life and which reduce long-term costs to everyone concerned — often have to be chosen soon after the accident.¹¹⁵ Money paid quickly after the accident can weight these decisions in favor of the best human repair.

Society at large also has an interest in the prompt payment of accident victims. While he bargains with an adjuster or waits for a court, the victim with medical bills and without earnings has to get the money somewhere. The longer his payment is held up, the more his accident cost is likely to become a personal tragedy for him and his family, and the more likely it is that the burden will be pushed onto others — such as relatives, friends, charities and, ultimately, taxpayers — who thereby become the second-level victims of the accident.

113. See, e.g., KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29, at 351-56; Conard & Jacobs, *supra* note 52, at 533.

114. For the economic value of rehabilitation, see NEW YORK UNIVERSITY CENTER FOR REHABILITATION SERVICES, *supra* note 54, at 52-55.

115. See note 55 *supra* and materials there cited.

Periodic Payments

To promote rehabilitation of victims, accident compensation should be paid on a regular, periodic basis rather than in a lump sum.¹¹⁶

A rehabilitation program for a seriously injured person can continue for years. The money for it is needed continuously, and the money is sure to be available for the purpose only if it is paid continuously.

Moreover, periodic payments take the guesswork out of setting the amount of a personal injury award. Unlike a system that pays the whole award at once, in a lump sum, a system that pays for losses and expenses as they accrue obviates inexact and inequitable forecasting as to the victim's chances of recovery, his life expectancy, his future prospects of employment and the cost of his full medical and rehabilitation treatment.¹¹⁷ Periodic payments should, therefore, lead to more precise awards and should further shorten the delay before the first benefits are paid.

Reliability

From the point of view of the victim and the consumer, any system for compensating accident loss should be reliable and predictable in its operation.

The victim should be able quickly to tell what benefits he is going to receive. Knowing is certainly better than being kept in the dark. Indeed, the individual's desire to avoid needless uncertainty is an important reason why we have laws at all, why people will pay for private insurance and why they will turn to government insurance if private insurance fails.

For the victim, the important certainty is certainty as to level of benefits, which may or may not mean certainty as to

116. Exceptions should be made where the total award is too small to justify the administrative cost of periodic payment and where prompt lump sum payment would actually hasten rehabilitation.

117. See pp. 32-33 *supra*.

number of dollars. In some cases it is impossible to predict what the victim's economic losses will be. There he needs early assurance that his losses will be covered by benefits, whatever the eventual dollar total may be.

The insurance consumer needs an accident reparations system that is reliable, one that fully protects him against catastrophic personal liabilities, that makes insurance available to him when he needs it and that maintains the quality of that insurance protection.¹¹⁸

Stability

The victim, the consumer and the general public would all be better off with an automobile accident reparations system that was stable and that had a natural tendency to perform well.

Stability has two aspects. First, it means that the system's rules and incentives should make the people who operate the system want to do the right thing. Second, stability involves making the system resistant to overloading — designing it for tomorrow's accident conditions and tomorrow's quantity of claims.

The problems of availability, quality and price are severe enough in the insurance field today that society should seek to establish legal structures that will encourage or reward the doing of what alleviates the problems.

The record in automobile insurance, as in other regulated activities, shows that the public is best served if the regulated activity is conducted within rules that tend to make the activity self-stabilizing.¹¹⁹ That means having economic incen-

118. See N.Y.S. INS. DEPT., *THE PUBLIC INTEREST NOW IN PROPERTY AND LIABILITY INSURANCE REGULATION* 29-32, 41-50, 53-54 (1969).

119. See, e.g., Kimball & Jackson, *The Regulation of Insurance Marketing*, 61 COLUM. L. REV. 141, 199-200 (1961); Loevinger, *Regulation and Competition as Alternatives*, 11 ANTITRUST BULL. 101, 133-34 (1966); Turner, *Reflections on Antitrust and Related Economic Policies*, 23 RECORD OF N.Y.C.B.A. 647 (1968); N.Y.S. INS. DEPT., 110TH ANN. REP. OF THE SUPT. OF INS. 324 (1969).

tives for operating the system well and consistently with its public purpose. It also means having clear, simple rules of business conduct which government can enforce vigorously. This approach is far more realistic than is a system which gives economic rewards for anti-social behavior by those who operate the system, and then relies on case-by-case cajolery or coercion by government to make those who operate the system act against their perceived self-interest and give the public good service.

To be stable in the sense of being able to handle tomorrow's accidents and tomorrow's caseloads, a reparations system should be conducive to mass operation. The case-by-case method of applying complex rules to complex and elusive facts collapses under a heavy caseload. Trying to meet a huge demand with a handicraft operation means, in automobile insurance as it would in automobile manufacture, both that quality falls off and that much of the demand cannot be met. Any good system should involve easy fact-finding and simple decisions.

Helping Prevent Accidents and Reduce Accident Costs

From the points of view of the victim, the consumer and society generally, a new system of handling accident costs should reduce the aggregate cost of traffic accidents.

The system could do so if it would (i) help prevent accidents or make them less severe, (ii) reduce the loss suffered by the victim in an accident of any given severity, or (iii) add the smallest possible additional costs in the process of transferring accident costs from the victim to others.

To help prevent accidents and make them less severe, the reparations system should make hazardous categories of motorists bear their full accident costs, and should define their costs broadly, to make them change their ways or to price

them off the road.¹²⁰ It should also internalize accident costs to any categories of motorists who are especially able to influence vehicle and road design.¹²¹

In its effect on the aftermath of accidents and on transaction costs, a good reparations system could definitely reduce the aggregate cost of automobile accidents. The system should encourage prompt and thorough physical and vocational rehabilitation.¹²² It should be efficient. Inefficiency and the resulting high premiums might indeed force some people, especially those with low incomes, off the roads entirely. But there are better and less regressive ways of stopping accidents.

A good reparations system should encourage automobile manufacturers to make cars which would give their passengers the best possible protection against injury in the event of a crash. To do so, the reparations system should be so designed that the vehicle owner would be insuring against injury to the occupants of his own car, rather than a stranger's, so that his insurance premiums might vary according to the protection which his make and model of car afforded its occupants.

Similarly, a good reparations system should encourage automobile manufacturers to make cars more resistant to damage and less expensive to repair.¹²³ The reparations system should

120. See pp. 92-95, 119 *infra*. See especially the writings of Calabresi, cited in notes 19 & 20 *supra*. As even his leading critics have noted, Calabresi's work is distinctive in that it calls "attention to the possibility of changing behavior so as to reduce the net loss to society from accidents." Blum & Kalven, *The Empty Cabinet of Dr. Calabresi*, 34 U. CHI. L. REV. 239, at 245 n. 14 (1967).

121. See pp. 91-92, 119 *infra*.

122. "Higher lump-sum awards resulting from deliberate or subconscious delay in rehabilitation until a claim is settled or tried produce higher claims losses and, in turn, higher insurance rates."

KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29, at 356. See also Kimball, *Automobile Accident Compensation Systems: Objectives and Perspectives*, *supra* note 20, at 378-79.

123. In recent months the Antitrust and Monopoly Subcommittee of the U.S. Senate Committee on the Judiciary has held a series of hearings on automobile repair costs and on the cost of insurance against damage to automobiles. Those hearings have brought forth repeated testimony as to the susceptibility of auto-

be so designed that the vehicle owner would be insuring against damage to his own car, rather than a stranger's, so that his insurance premiums might vary according to the durability and repairability of his own make and model of car.

Finally, a good way of handling automobile accident costs could promote systematic approaches to traffic safety by generating complete and accurate data on traffic accidents and by giving the people involved in an accident the minimum incentive to distort their accounts of what happened.

This is not to say that any accident reparations system can take on major responsibility for traffic safety. That is the responsibility of other laws and other institutions. But a good reparations system could help in ways that are impossible under the fault insurance system.

Consumer Choice and Influence

From the point of view of the consumer, the automobile insurance system should afford him the widest possible free choice in the kinds and amounts of insurance he can buy.

There should be willing sellers in the insurance marketplace. The consumer should find insurance companies competing for his patronage. The inventiveness of insurance companies should be directed at ways of attracting and holding customers, not at turning them away.

mobiles to expensive damage in relatively minor collisions and as to the high cost of repairing damaged automobiles of the presently prevailing design. The Chairman of the Subcommittee, Senator Philip A. Hart, has said:

"[T]oday's cars can suffer far too much damage in low speed accidents. This is an area that we have been exploring in our auto repair hearings.

"The suggestion has been made that perhaps the insurance companies should be rating cars instead of people as an impetus to the automobile industry to give more attention to repairability on their drawing boards."

Hart, Address at Annual Meeting of National Association of Casualty and Surety Executives and National Association of Casualty and Surety Agents, Oct. 7, 1969, at 6. See also *How Auto Repairs Inflate Your Insurance Bill*, J. AMER. INS., Nov.-Dec. 1969, at 15-17.

The system should also give the consumer maximum influence over the quality of the insurance he gets for his premium dollar.

The system should place the consumer under no unnecessary compulsion to spend his money on insurance premiums.

A wide range of consumer choice, effective consumer influence over quality and minimum compulsion on consumers — all are qualities of a system in which decisions are made by the people most affected by them. All can best be achieved within a system which avoids creating unnecessary antagonisms of interest between consumers, who buy from insurance companies, and insurance companies, which sell to consumers. All can best be achieved within a system which avoids creating unnecessary antagonisms of interest between consumers, who pay money into the insurance mechanism, and victims, who take money out.

Courts and Other Related Institutions

From the point of view of society as a whole, the system of handling automobile accident costs should help, rather than hinder, the work of other important social institutions.

The automobile and its accident costs are so pervasive and overwhelming in reach and impact that change in the automobile accident reparations system may, as a practical matter, be a more effective way to strengthen another institution than any achievable, direct modification of that other institution would be.

The institution with the most apparent stake in the automobile accident reparations system is the judiciary.

Recent U. S. Supreme Court decisions have called upon the courts for more careful surveillance of the administration of criminal laws.¹²⁴ Both the community and the accused are

124. For a discussion of the impact of some of these important constitutional decisions on the workload of the courts, see Jones, *Translating Recent Supreme Court Decisions Into Courtroom Reality*, 19 BAY. L. REV. 371 (1967).

entitled to an accessible, uncluttered and undistracted bar and judiciary for the resolution of these questions of ultimate human consequence.¹²⁵ Furthermore, lawyers and judges are using the law more and more creatively in the causes of conservation, environmental protection, consumer protection, and safeguarding the rights of those least able to deal, on an even footing, with modern society.¹²⁶

These new works are eminently worthwhile, but they add to the burdens already on the bar and the courts.

Yet of New York's 221,000 pending State civil court cases, about half arose from automobile accidents.¹²⁷ The corollary of the victim's delay in obtaining justice is the burden on the courts in dispensing it.¹²⁸ It is highly questionable whether the automobile deserves its dominant share of the docket, whether so much of the energy and attention of the courts should be expended on this one activity.¹²⁹ Our constitutions have many

125. Chief Justice Warren has described the consequences of court congestion: "[I]nterminable and unjustifiable delays in our courts are today compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundations of constitutional government in the United States."

Warren, *The Problem of Delay: A Task for Bench and Bar Alike*, 44 A.B.A.J. 1043 (1958). See also Burger, *The Courts on Trial — A Call for Action Against Delay*, 44 A.B.A.J. 739, 741 (1958); THE AMERICAN ASSEMBLY, *supra* note 30, at 6.

126. See, e.g., *Can Law Reclaim Man's Environment?*, TRIAL, Aug-Sept. 1969, at 10; *Consumer Protection Symposium*, 29 OHIO ST. L. J. 593 (1968); *Symposium — Consumer Protection and the Urban Poor*, 37 GEO. WASH. L. REV. 1013 (1969).

127. See 14 N.Y.S. JUD. CONF. ADMIN. BD. ANN. REP., *supra* note 98, at Appendices A118, A132, A138; Hofstadter & Pesner, *supra* note 28, at 618. It has been estimated that automobile accident litigation accounts for 65 to 80% of all the civil court cases tried in the United States. Moynihan, *supra* note 34, at 80, col. 2.

128. Even those who defend the preservation of the status quo in automobile accident litigation acknowledge the intolerable burdens of congestion and delay. "[T]he continued existence of excessive delay supplies a basis for severe criticism and thus constitutes a threat to the continuation of the present system for handling automobile accident cases." A.B.A. REPORT, *supra* note 43, at 34.

129. "At a time when issues of justice, violence and civic peace are of immediate and pressing concern, to devote the better part of the judicial (and an enormous portion of the legal) resources of the

guarantees of judicial independence; there is no parallel guarantee of judicial relevance. The resources of the bench and bar are no more unlimited than the resources of the accident reparations system. Both need to save their resources for what matters most. Both need to set and follow intelligent priorities.¹³⁰

Other than the courts, several important institutions have a stake in what is done in automobile accident reparations. The health professions would be strengthened by a reparations system that moved money where and when needed for medical care, and by one that did not divert medical manpower away from giving medical care and into testifying in lawsuits and otherwise helping operate the reparations system. Employee benefit plans could, under a system that encouraged integration of benefits, use fringe benefit dollars more effectively and could realize for participating employees a saving in automobile insurance premiums by virtue of their other medical and wage loss benefits.¹³¹ Traffic safety programs would be helped by a system that allocated accident costs so as to give the most incentive toward safe vehicle design and safe driving, and that permitted the reparations system to furnish undis-

nation to managing the road system is the kind of incompetence that societies end up paying for."

Moynihan, *supra* note 34, at 76, 80.

130. After the creation of 125 new judgeships in New York State in 1968, the Chief Judge of the Court of Appeals said:

"[V]iewing the current scene and contemplating the future, with its growth in population, with its multiplication of motor vehicles, with its ever rising input of cases and the creation of new rights and remedies, one must conclude that the increase in judicial manpower alone cannot possibly rid the courts of congestion and delay. . . .

"... Different and innovative changes, more far reaching than the addition of judicial manpower are called for and demanded. We must, I had occasion recently to write, do our utmost to see to it that the resources devoted to the judicial process as a whole are used in ways that serve the highest social priority."

Fuld, *The New York Court System — Review and Forecast*, 40 N.Y.S.B.J. 412, 413 (1968).

131. See pp. 31-32 *supra* & 123-24 *infra*.

torted data on accidents for use in systematic approaches to traffic safety.¹³²

Private Enterprise

From the point of view of citizens generally, the automobile accident reparations system should be operated by private enterprise.

The needs of the victim and the consumer could be as well met by a governmental automobile insurance system as by a private one. But we believe that, in this country, the interests of society as a whole would be better served by a reparations system operated by private enterprise, with minimum operational (as distinguished from regulatory) involvement by government. The reasons are ideology, pluralism, continuity and government priorities.

The ideological point is simple. Our society is predicated on the idea that individuals should have the greatest possible freedom in economic, political and social activities. Under this theory, government should take over only where the private arrangements are pernicious or ineffectual and are not amenable to reform. The initial duty of government is reform, not absorption, of private institutions that are working badly.

A related belief is that decentralized, variegated, responsive and smaller units of power are preferable to a monolithic and centralized monopoly of power. The reason is not efficiency; it is the desire to stimulate individual creativity, to encourage

132. "Imagine how much more valuable an MV104 [automobile accident report] would be to the Motor Vehicle Department if the person completing it could explain exactly how and why the accident occurred without having to fear that he would lose all chance of collecting for his injuries and damages.

"Poor visibility, uneven braking, skidding tires, slippery road surfaces, bumpy roads, poor lighting, and all the other unsafe conditions would be reported to the proper authorities and corrected sooner."

NEW YORK STATE INDEPENDENT MUTUAL INSURANCE AGENTS, REPORT OF THE AUTO INSURANCE STUDY COMMITTEE, Sept. 18, 1968. See also pp. 118-20 *infra*.

flexibility of response and healthy competition and to guard the public against the terrible consequences when centralized power goes wrong.

Obviously any significant departure from the fault insurance system would cause some disruption within the insurance business, insurance regulation, the bar and the courts. But that does not mean we should pursue disruption for its own sake. If a satisfactory system could be operated about as well by either private enterprise or government, it would be preferable for the system to continue to be operated by private enterprise.

Finally, from the institutional standpoint of government, the system should not be operated by government if there is a workable alternative. The propensity of government agencies ever to enlarge their jurisdictions has contributed much sadness and humor to modern life. Thoughtful students of government have expressed concern about the consequences of government's taking on functions it cannot perform or cannot perform well, or functions that might have been done by somebody else and which dilute the attention and effectiveness of government in other areas where government alone can act. Where private enterprise appears capable of operating a good system, it is in government's interest to give private enterprise a chance to do so.

Conclusion

In the interest of accident victims, insurance consumers and citizens generally, any system of handling the cost of automobile accidents should be humane and fair.

These general objectives led us to a number of specific criteria or operating characteristics of a good system. The best system will, of course, be the one that best combines those operating characteristics, and that balances competing interests according to the most enlightened priorities.

But in the process of working out the criteria for a good system, one thing has become very clear. Almost everything a good system has to do cannot be done by the fault insurance system.

A PROPOSAL FOR A BETTER SYSTEM

The preceding sections of this Report concluded that the fault insurance system works badly, that the causes of its working badly are inherent in the system, and that, therefore, real improvement can come only from thoroughgoing change and not from tinkering.

The Report then stated for whose benefit any new system should be designed, and proposed general objectives and specific operating criteria for a good system.

The operating characteristics of any system will affect one another. They can be put together so that they conflict, as in the fault insurance system, with the result that the whole will be worse than the sum of the defects of the parts. Or the components can be put together, and the operating characteristics balanced, in such a way that the different parts of the system will help each other work better, so that good characteristics will reinforce each other. Then the whole may be better than the sum of the good qualities of the parts.

This section of the Report describes the system of handling automobile accident costs which, in our judgment, best combines the operating criteria. In a later section the proposal will be evaluated under the criteria. A suggested approach to drafting legislation to implement the proposal is in Appendix C.

Our proposal has eight main features:

- It is a system to compensate victims for losses suffered in automobile accidents, rather than to shift costs according to fault.
- It compensates the victim for all of his net economic loss.
- It requires motorists to buy insurance, but only to cover those losses not repaid from other, more efficient sources.
- It allocates the cost of compensating for such losses, as between private and commercial vehicle owners, accord-

ing to the relative ease with which they can handle that cost.

- It imposes special cost burdens on drunken drivers and other particularly obnoxious categories of motorists.
- It leaves room for voluntary arrangements for coverage beyond what is required by law.
- It uses special sanctions to make sure insurance companies pay claims promptly and fairly.
- It applies to all driving in this State and to none outside.

A Compensation System

An accident victim would be able to recover for economic loss resulting from an automobile accident without having to prove the negligence or fault of somebody else. The present tort action for negligent operation of an automobile would be abolished.¹³³ The proposal has elements of a first-party, no-fault system and of a strict liability system, for this is an area where those two legal concepts largely overlap.¹³⁴

The owner of a vehicle would be financially responsible for net economic loss resulting from personal injury or property damage to anyone or anything, other than another vehicle and its occupants, arising from accidents in which his vehicle was involved.¹³⁵ His responsibility would be fully discharged by insurance and the purchase of such insurance would be

133. The only exception would be death actions, and that only for constitutional reasons. See note 139 *infra*. For a discussion of other possible constitutional questions, see Appendix C. The proposed changes in rights and obligations, and the proposed abolition of actions for negligence, concern only the use of vehicles. Actions against persons other than an owner or driver and arising out of the manufacture, distribution or repair of motor vehicles would not be curtailed.

134. Where the vehicle owner is the claimant, the analogy is closest to first-party insurance. Where someone else (*e.g.*, a passenger or pedestrian) is the claimant, close legal analysis would probably lead to the analogy of strict liability (*i.e.*, third-party, no-fault) or to a contract claim by a third-party beneficiary. The significance of these legal niceties should be nil.

135. For the definition of "owner" of a motor vehicle, see N.Y. VEHIC. & TRAFFIC LAW §128 (McKinney 1960).

compulsory.¹³⁶ The driver, passengers and pedestrians injured, in their persons or property, by a vehicle would be equally entitled to claim against the vehicle owner's insurance company.¹³⁷

Unlimited Benefits for Net Economic Loss

The compulsory, minimum automobile insurance should, in general, provide full compensation for the net economic loss of accident victims.¹³⁸ This full compensation should be equally

136. The statement in the text that the owner's responsibility would be discharged by the required insurance means that (i) if he had the insurance, no claim would lie against him personally, and (ii) if he did not have the insurance, he would be personally responsible. As the text indicates, we have chosen the owner of the vehicle—rather than the driver at the time of the accident—as the person responsible. The only exception to this rule is the strict liability imposed upon certain especially hazardous categories of drivers (e.g., drunken and drugged drivers). See pp. 92-95 *infra*. Making the vehicle owner financially responsible would follow the present automobile insurance rule, and commends itself to us on grounds of continuity and simplicity, although the various "insure the driver" plans certainly have merit. See, e.g., 2 BRITISH COLUMBIA ROYAL COMMISSION ON AUTOMOBILE INSURANCE, *supra* note 44, at 586-604; Knowlton, *Insure the Driver Plan*, 3 FEDERATION INS. COUNSEL Q. 77 (1953).

137. Occupants of another car would be covered by the other car owner's insurance. This would be the rule for all accidents involving two or more motor vehicles. In certain circumstances, there would be a subsequent, or second-level, shifting of costs (see pp. 91-95 *infra*). While a predominantly first-party insurance system, with its greater incentive to insure voluntarily for one's own benefit and for the benefit of family and friends, could be expected to attain even more complete coverage of the driving population than is now the case, there are nonetheless bound to be gaps in coverage. These gaps would be covered by appropriate modification of New York's existing Motor Vehicle Accident Indemnification Corporation (M.V.A.I.C.). Under present law, victims may claim against M.V.A.I.C. if they were caused personal injury by (a) uninsured motor vehicles registered in a state other than New York, (b) unidentified motor vehicles which leave the scene of the accident, (c) motor vehicles registered in this State as to which at the time of the accident there was not in effect a policy of liability insurance, (d) stolen motor vehicles, (e) motor vehicles operated without the permission of the owner, (f) insured motor vehicles where the insurer disclaims liability or denies coverage and (g) unregistered motor vehicles. The essence of the foregoing list is that, at the time of the accident, no insurance company was obligated to pay for the cost of the accident. See N.Y. INS. LAW §§600-626 (McKinney 1966). See also note 92 *supra* and materials there cited.

138. While we have tried, through such provisions as tax offsets and primary recourse to other sources of compensation, to make sure that the victim would not be paid more than his net economic loss, we have recommended full compensation for that loss. This is an area where reasonable men differ, and the

available to the owner, driver, passenger and pedestrian injured by the vehicle.

Pursuant to that general approach, we recommend that the compulsory insurance provide the following specific benefits with respect to the two types of economic loss in automobile accidents — personal injury and property damage.

(a) *Personal Injury*

An injured person can suffer several kinds of economic loss, and the proposed compulsory insurance would give compensation for all.¹³⁹ Benefits would be paid periodically, as the victim's losses and expenses accrued.

Legislature might well prefer one or more of the recognized restrictions on full compensation — deductibles, ceilings and co-insurance. Whether or not to have a deductible depends on how one balances the valid objectives of full compensation and progressiveness against the valid objective of efficiency, for small claims cost proportionately more to process through the insurance mechanism than do large ones. Whether or not to have a ceiling on compensable income loss depends on how one balances the valid objective of full compensation against the valid objectives of low premiums and availability of insurance. High-earning policyholders would, under our proposal, largely be paying their own way. The exposure in the case of an extremely high-salaried person might even be regarded as a catastrophic or uninsurable exposure, leaving him in the anomalous position of being in a sub-standard class of insureds. Finally, whether or not to have co-insurance (so that automobile insurance would pay a specified high proportion, but not all, of the loss) depends on how one balances the valid objective of full compensation against the valid objective of discouraging malingering. In each of these cases we have come down on the side of full compensation, with the thought that, should the Legislature disagree with our priorities or should practical problems develop, the Legislature could always enact one of the restrictions either initially or at a later date.

139. Insurance benefits for personal injury would be payable even if the victim later died of his injuries. But loss to the survivors due to the death itself would not be covered by our proposal, because the New York State Constitution (art. I, §16) forbids any impairment of actions to recover damages for injuries resulting in death. The present tort action would thus continue to be available in death cases. Fatal accidents could be compensated efficiently under our proposed plan, and we would recommend that the Constitution be appropriately amended. But since the Constitution prevents the abolition of the tort action for loss due to death, we have reluctantly excluded all death claims for loss to survivors, whether or not a tort action is available at common law, from all aspects of our proposal. If the Legislature wished instead to make benefits like those recommended generally in this Report immediately available in death cases, legislation implementing our proposal could, of course, so provide and could then subrogate the paying insurer to the survivor's tort claim for wrongful death. Or the Legislature might wish to make benefits under this proposal available in death cases where the action for wrongful death does not lie (*e.g.*, death of

The minimum compulsory coverage would offer the following kinds of benefits:

(i) *Medical expense.* As to medical expense, benefits under the compulsory insurance would be unlimited in scope and amount. There would be no restriction on reasonable hospital, surgical and medical expenses covered and no ceiling on the amount of money reimbursable.¹⁴⁰

(ii) *Income loss.* Similarly, compensation for net income loss under the proposed compulsory insurance would be unlimited. Net income loss would be measured by what the victim would have earned but did not earn because of the accident — a measure which in most, but not all, cases would be the continuation of his wage level at the time of the accident.¹⁴¹

the driver in a one-car accident). In any event, the unavoidable retention of the fault insurance system for death claims for loss to survivors should in no way impair the viability or impede the enactment of our proposal for handling all personal injury automobile accident costs. Only 1.3% of all personal injury automobile accidents in New York State result in a fatality. 1968 N.Y.S. MOT. VEHIC. DEPT. ANN. REP., *supra* note 1, at 21. An even smaller fraction (approximately 1.0%) of all automobile personal injury insurance claims are for death. A.I.A. REPORT, *supra* note 25, at 16.

140. Inevitably there would be borderline questions as to whether a given medical procedure, kind of care or level of payment was reasonable, just as there are such questions today under private and governmental health insurances with liberal benefits.

141. The usual case of income loss involves a short absence from work. New York Insurance Department actuaries have calculated from the New York data used in the A.I.A. REPORT, *supra* note 25, that some 80% of automobile personal injury cases in New York State with some income loss involve less than one month of such loss, and some 97% involve less than 6 months. Thus, in the vast majority of cases where an employed person is injured, the simple continuation of his pre-accident earnings level would be all that would be required. Longer-term disabilities, and especially those involving people who would have entered or left the labor force or would have changed income level during the period of disability, raise more complex questions of valuation. For that reason, we have selected a flexible standard relating to what the victim would have earned but for the consequences of the accident. Detailed clarification would come in policy forms — which would have to be approved by the Insurance Department for consistency with legislative intent — and, in particularly difficult cases, in the courts, which are experienced in valuation questions of this kind. Disbursements for services formerly performed free by the victim (e.g., housekeeping) raise different questions (*see* p. 88 *infra*).

Since insurance benefits are not subject to income tax, the amount of insurance benefits for loss of income should be adjusted to approximate what the victim would have earned net of federal, state and municipal income taxes.¹⁴²

(iii) *Replacement services.* The compulsory insurance would also cover the expense of purchasing services normally performed free by the victim, but which the injury prevented the victim from performing.¹⁴³

(iv) *Rehabilitation.* The compulsory coverage would provide full compensation for physical and vocational rehabilitation.¹⁴⁴

(v) *Other out-of-pocket expenses.* The compulsory insurance would also pay for miscellaneous out-of-pocket expenses incurred as a result of the accident.¹⁴⁵

(b) *Property Damage*

The legal relationships with respect to property damage would be the same as those for personal injury: the insurance

142. See Internal Revenue Code §§104(a)(2) & (3), 105(a); Reg. §1.104-1(d); Rev. Ruls. 55-331 (1955-1 Cum. Bull. 271) and 58-90 (1958-1 Cum. Bull. 88). A similar principle of a set-off for income tax savings has been incorporated in several automobile insurance reform plans. See, e.g., A.I.A. REPORT, *supra* note 25, at 5; KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29, at 278, 307, 408. Those proposals use a flat percentage offset, subject to downward revision upon proof. For reasons of fairness, we prefer a progressive scale of offsets — lower offsets for lower incomes — which would be based on effective tax rates at various income levels, remembering that the first dollars of income lost come off the top, or highest taxed, of the victim's annual earnings. Even such a sliding scale would call for brackets, classes and averages, and would be only approximately accurate in any given case. Yet it would be more accurate, fair and progressive than a flat offset or, worst of all, no income tax offset at all, and would appear to be a real deterrent to malingering. On the tax offset aspect of our proposal, we are grateful for the assistance of Dr. Lloyd Slater, Director of the State's Tax Structure Study Committee. Income tax offsets have also been proposed within the context of the fault insurance system. See e.g., A.B.A. REPORT, *supra* note 43, at 148; CONN. INS. DEPT., *supra* note 97, at 61.

143. Examples would be payments for household help and baby-sitters.

144. Examples would be payments for prosthetic devices and job re-training. As a condition to continued eligibility to receive monetary benefits, injured persons should be required to accept reasonable rehabilitation procedures.

145. Examples would be payments for transportation and telephone calls.

requirements would not. The rules for damage to automobiles and to other property would be as follows:

(i) *Automobile damage.* The vehicle owner would be responsible for damage to his own car, but would not be compelled to insure. The vehicle owner would, of course, have the option of insuring against such damage, as he may now do with collision insurance. He would not be liable for damage to someone else's car.¹⁴⁶

(ii) *Other property damage.* The vehicle owner would be responsible for damage to property other than another automobile — property such as the clothing and belongings of passengers and pedestrians and such as roadside buildings. Since the property involved would be primarily that of other people, insurance against its damage should be required and included in the vehicle owner's compulsory insurance.¹⁴⁷

Compulsory Insurance

With respect to personal injury, the automobile insurance which all vehicle owners would be compelled by law to buy would cover only net economic loss.

To avoid duplication of benefits, and correspondingly high premiums, it is necessary to choose either automobile insurance or the other medical and wage loss insurances to provide the primary coverage. We have concluded that the compulsory automobile insurance should pay only those economic losses not repaid from the other sources.¹⁴⁸

146. Thus in two-car accidents, neither car owner could recover from the other for automobile damage. This immunity to suit is a consequence of abolishing tort actions between drivers (*see* note 133 *supra* and accompanying text) and is the parallel in property damage cases of the principle applied to personal injury. The only exception, which also parallels our proposal for personal injury, would be the special rules with respect to commercial vehicles (*see* pp. 91-92 *infra*) and drivers with special cost burdens (*see* pp. 92-95 *infra*).

147. The coverage would be without dollar limit.

148. The same conclusion was reached by the Economics Editor of *Consumer Reports*:

"Nor can we agree that automobile insurance should *necessarily* be the primary source of indemnity. Instead of encouraging Blue

With respect to property damage, the vehicle owner would be compelled by law to insure against damage to property other than automobiles but, as discussed above, would not be compelled to insure against damage to his own car.

Rational Cost Allocation

Our proposal would allocate accident costs among broad categories of motorists according to how easily they can avoid, reduce, absorb or transfer those costs. For present purposes, we propose to separate motorists into two categories — private and commercial.

(a) *Private Passenger Automobiles*

As explained above, every private passenger car owner would have to carry insurance covering anyone and anything

Cross and other highly efficient plans to withdraw duplicate benefits, a truly consumer-minded system would designate as the primary indemnifier the policy returning the largest percentage of its premium dollar to policyholders."

Klein, *supra* note 85, at 9. For a discussion of the advantages of having automobile insurance secondary to other sources of compensation, *see* pp. 113-14 *infra*. For a discussion of the disadvantages of duplication of benefits, *see* pp. 30-32, 36, 64, 76 *supra*. For an explanation of the terms "primary" and "secondary" as used in this Report, *see* note 112 *supra*. Examples of sources of payment of medical expenses which would be primary to the compulsory automobile insurance include Blue Cross, Blue Shield, private accident and health insurance coverages, uninsured employee medical care plans, and Medicare. But for legal and public policy reasons the automobile insurance coverage would not be secondary to such public assistance medical programs as Medicaid. Examples of sources of income continuation payments which would be primary to the compulsory automobile insurance include paid sick leave plans, statutory and private disability benefits and other loss-of-income insurance, and unemployment insurance. The compulsory automobile insurance income loss benefits would not, however, be secondary to personal savings or public assistance programs. With automobile insurance secondary to other sources, insurers would initially have to rely, for rating and claims purposes, on statements by the policyholder or claimant as to his other available sources of compensation. The insurer could, of course, call for proofs. Moreover, the expectation of reduced automobile insurance premium rates where the policyholder has available collateral sources of medical and income benefits would be an incentive to full advance disclosure of such collateral sources. In recommending that automobile insurance be secondary to other sources, we have followed the reasoning of the President of Consumer's Union (*see* Warne, *supra* note 62, at 498), of the Economics Editor of *Consumer Reports* (*see* Klein, *supra* note 85, at 9) and of KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29, at 278-80, 400-09, favoring efficiency and low premiums. We have rejected the reasoning in A.I.A. REPORT, *supra* note 25, at 5, which favors internalization and, understandably though naturally not expressed, the maintenance of premium volume.

injured or damaged by his car, other than another car and its occupants.¹⁴⁹

(b) *Commercial Vehicles*

The owners of commercial vehicles would have the same responsibilities as the owners of private passenger cars, plus one additional responsibility — for damage to a private passenger car or injury to its occupants.¹⁵⁰

In a two-car accident involving a commercial vehicle and a private car, the occupants of the private car would, as usual, recover against the insurer of the private car. Thereafter, however, costs would be shifted from the insurer of the private car to the insurer of the commercial vehicle.¹⁵¹

149. The terms "private car", "private passenger car" and "private passenger automobile" are used in the text as synonyms, with the meaning of "private passenger automobile" as defined in Rule 1 of the Private Passenger Automobile Manual of the Insurance Rating Board. The term includes motorcycles. See also C. BRAINARD, *supra* note 11, at 49.

150. The term "commercial vehicle" is used in this Report to include both commercial vehicles (e.g. trucks) and taxicabs as those terms are defined in Rules 30, 45 and 47(11) of the Commercial Automobile Manual of the Insurance Rating Board. See also C. BRAINARD, *supra* note 11, at 51-52. For a discussion of the public policy reasons for a special second-tier shifting of accident costs to commercial vehicles, see pp. 67-68, 71-73, 76 *supra* and pp. 115, 119 *infra*. Buses are omitted because of their large financial exposure for injuries to passengers. For overall premium level effect on commercial vehicles, allowing for secondary shifting of loss, see Appendix B and materials there cited. Even within the general principle of secondary shifting of costs to commercial vehicles, however, there is ample room for reasonable men to differ, and the Legislature might wish to omit certain kinds of commercial vehicle from strict liability, to extend such liability to certain kinds of private passenger cars principally used for business or to require that a given commercial vehicle have in some way caused the accident before costs would be shifted. It should be noted that the analysis leading to the textual proposal for commercial vehicles is the identical analysis which led to a parallel decision in the more obvious case of the pedestrian. Car owners, as a category of people, are better able to avoid, reduce, absorb or transfer automobile accident costs than are pedestrians. Hence, it is wise to make the car owner pay for injury to pedestrians or, put differently, to internalize the cost of car-pedestrian accidents to the activity of driving rather than to the activity of walking. We concluded, therefore, that the car owner's insurance should cover pedestrians injured by the car as well as passengers in the car.

151. Only the insurer of the private passenger car would have a right against the commercial vehicle owner or his insurer, and then only for the amount the private car insurer had actually paid in benefits. A victim's claim to compensa-

Insurance against the strict liability for commercial vehicles would be compulsory.¹⁵²

Special Cost Burdens

Certain categories of drivers who are, as a class, especially hazardous should bear the total cost of accidents in which they are involved. Simply by being on the road, such drivers are performing a sufficiently anti-social act that society is entitled to say they use the road at their peril.¹⁵³

tion would not be affected by whether a commercial vehicle was involved in the accident. All that would be accomplished by the commercial vehicle owner's strict liability would be the secondary transfer of certain accident costs—not from individual car owners or for individual accidents, but from private passenger car owners as a category to commercial vehicle owners as a category. One can think of this as a subrogation (*i.e.*, the paying insurer succeeding to the rights of the victim) in a very technical sense, but it is probably better just to think of it as a mechanism for inter-insurer settlements. Subrogations are common today where a first-party insurer (*e.g.*, under a fire insurance or automobile collision insurance policy) pays its policyholder for a loss for which a third party may be liable. The disadvantage of subrogations is additional transaction costs, especially where the person who has already received insurance benefits retains his claim against the third party, merely being obliged to set off or repay to his insurer, out of his later recovery from the third party, whatever the insurer had earlier paid him, and where the standard for such secondary transfer of cost (*i.e.*, for the recovery from the third party) is a complex one like "fault". Under our proposal for commercial vehicles, these transaction costs should be reduced because of (i) the simplicity and uniformity of the strict liability basis for recovery; (ii) the limited number of cases (*viz.*, commercial-private accidents) in which this secondary transfer of costs would occur; and (iii) the likelihood that such a system of inter-insurer payments would lend itself readily to periodic settlements of cases on a sampling or a clearing house basis. The proposal should be distinguished from the idea of first-party benefits plus set-offs against liability awards, sometimes advanced as a general palliative for the ills of the fault insurance system. *See* pp. 53-54 *supra*. Where two commercial vehicles were involved, there would be no secondary shifting of costs as between their insurers.

152. It is true that here the strict liability insurance would be purely for purposes of the secondary transfer of costs (and would not be needed to compensate victims in the first instance). Nevertheless, we have concluded that the insurance should be compulsory, because of factors unique to the commercial vehicle situation which would diminish the incentive to insure without commensurately increasing the deterrent force of strict liability, including (i) the prevalence of corporate ownership, even down to a separate corporation for each vehicle, (ii) the insulation of corporate managers and shareholders from corporate liabilities, and (iii) the ability to place a corporation in bankruptcy without affecting either controlling persons or affiliated corporations.

153. For examples of strict liabilities under present law, *see* Appendix C.

These categories include drunken drivers, drugged drivers, drivers using a car in the commission of a felony, and drivers intentionally causing accidents.¹⁵⁴

These categories of drivers would be subjected to strict liability for the damage they caused, and the liability would be of the driver and not the vehicle owner. Their liability would not depend on proof that they were, at the moment of the accident, negligent or at fault.¹⁵⁵

These special obligations would have no effect on the compensation of victims. In an accident involving a driver in any of these categories, the victims would be able to recover compensation from a vehicle owner's insurer as in any other case.¹⁵⁶ The paying insurer could then claim reimbursement

154. This is the one exception to our pattern of imposing financial responsibility on the vehicle owner and not on the driver. Here we have categories of driving behavior that are both criminal and hazardous, and that are matters of individual conduct rather than of vehicle ownership. The contrary was true of commercial vehicles, for which we proposed strict liability on grounds of cost allocation alone and, therefore, proposed that the vehicle owner rather than the driver be liable. See pp. 91-92 *supra*. The standard of drunkenness for strict liability purposes could be that used in the law for driving while intoxicated. See N. Y. VEHIC. & TRAFFIC LAW §1192 (McKinney Supp. 1969). Recent developments (e.g., breath tests, blood alcohol tests) have made the determination of drunkenness both simpler and more objective than it was in even the recent past. See N. Y. VEHIC. & TRAFFIC LAW §§1193-a, 1194 (McKinney Supp. 1969).

155. This proposal partakes of imposing liability for a status or condition. As framed in the text, it would require neither proof of bad driving at the moment of the accident nor even a causal relationship between the strictly liable driver's condition and the accident. We recognize that it could be very harsh in some cases, e.g., where a drunken driver or the driver of the getaway car from a robbery was proceeding slowly and obeying all traffic laws when a speeder coming the other way lost control of his car, swerved across the center line and hit him head on. If the Legislature believed our proposal was too hard on drivers in the strict liability categories, it could, of course, require a causal relationship between the driver's condition and the accident or otherwise introduce considerations of case-by-case blameworthiness. We do not so recommend principally because of the increased frictional costs generated by such case-by-case determinations, but recognize it as an area where reasonable men can differ.

156. The only exception to the statement in the text would be where the victim was injured due to his own wilful or felonious conduct (e.g., as a driver intentionally causing an accident). See p. 105 *infra*. We have considered and rejected the possibility of further penalizing the drunken or drugged driver by excluding him from first-party recovery. While the drunken driver should be

from the strictly liable driver or his insurer.¹⁵⁷

It would be possible to insure against strict liability for drunken or drugged driving, but such coverage should be optional and separately rated. It would be an example of liability insurance with no compensation function. Its only function would be to protect the assets of the drunken or drugged

dealt with severely by the civil law of automobile accident reparations, as well as by the licensing and criminal law, we believe that the strict liability proposed here is fairer and more effective than depriving him of his first-party automobile insurance benefits, and that it is unnecessary to do both. To deprive him of funds for income continuation and, especially, for medical care would be counterproductive socially. If, however, the Legislature wished to deal yet more harshly with the drunk, it could also (i) prohibit liability insurance against strict liability for drunken driving, or (ii) deprive him of automobile insurance benefits for his own injury and, in that event, could perhaps make similar provision for drunken pedestrians. Or the Legislature might wish to permit some, but not full, first-party benefits to a drunken driver, *e.g.*, by providing that he could recover from his vehicle owner's insurer full medical benefits but could recover income loss benefits only up to, say, the State's workmen's compensation ceiling. Finally, the Legislature might wish to subject drunken drivers to "tort fines," perhaps along the lines suggested by Professor Ehrenzweig, while continuing to let them have first-party benefits for economic loss. *See Ehrenzweig, Full Aid Insurance for the Traffic Victim—A Voluntary Compensation Plan*, 43 CALIF. L. REV. 1, 37, 41 (1955).

157. It is a close question whether indemnity-liability insurance against such strict liabilities should be prohibited by law. The liability for felonious or intentionally destructive behavior would, under normal standards of what insurances are against public policy, be uninsurable. That result seems sound here. However, for the purpose of making the price of drunken or drugged driving visible in advance, so as to exert the most effective economic deterrence, insurance against strict liability for drunken or drugged driving should be permitted. *See pp.* 65-67, 71-72 *supra* and note 158 *infra*. Amounts received by a driver with respect to his own injuries should be exempt from execution, in order to avoid the indirect effect of denying the driver his first-party benefits. With respect both to strict liabilities and to the allocation of costs to commercial vehicles, we have proposed that the second-level shifting of costs be between insurers only and that it involve only the reimbursement of payments made under compulsory (personal injury and non-automobile property damage) insurance, plus payments, if any, made under optional collision insurance. This approach is designed to simplify the second-level cost shifting and to reduce transaction costs. Alternative approaches also worth considering include (i) providing for second-level shifting of any insured accident costs (*e.g.*, redundant benefits for personal injury), (ii) providing for second-level shifting of only those costs which were covered by the compulsory (personal injury and non-automobile property damage) insurance, and (iii) permitting a first-level shifting of automobile physical damage costs, where such costs were not covered by collision insurance, as well as a second-level shifting of insurance payments for net economic loss from personal injury and collision damage to automobiles.

driver, for all of his victims would already be compensated either by the insurance on his car, if passengers or pedestrians, or by the insurance on their own car, if occupants of another car in a two-car accident.¹⁵⁸

Optional Coverages

While our proposal specifies the minimum coverages which all vehicle owners would be compelled by law to buy, it also leaves ample room, and provides incentives, for individuals to buy additional, optional coverages suited to their individual needs.¹⁵⁹

These optional, supplementary coverages could be expected to evolve over time. While we do not need to foresee now every possible form the optional coverages might take, certainly among the possibilities would be (i) insurance for other than net economic loss, (ii) collision insurance for damage to one's own car, (iii) extra liability insurance for remaining fault law situations, and (iv) strict liability insurance for drunken or drugged driving.¹⁶⁰

158. Since this strict liability insurance has no role in compensating victims, but only functions in effecting a secondary transfer of accident costs, it need not be compulsory. Separate rating of this optional coverage, rather than lumping its experience in with general automobile insurance experience, would help assure that drunken drivers paid the full cost of the consequences of their conduct. It would thus reinforce the deterrent effect of imposing the strict liability on the drunken driver rather than on the vehicle owner. The optional nature of the coverage, together with its separate rating, would enable people who only drive when sober—a category of behavior society presumably wants to encourage—to avoid an unnecessary insurance cost. While we propose that the permitted insurance against strict liability for drunk and drugged driving be optional, the Legislature might well prefer, on the analogy of the usual financial responsibility law, to make such insurance optional initially but compulsory after an individual had once been held liable for, or convicted of, drunk or drugged driving.

159. It would appear fair to require that any such additional first-party benefits, purchased by the car owner, be by their terms equally available to non-owner drivers, passengers and pedestrians.

160. Optional coverage for other than net economic loss could pay for the non-economic aspects of disfigurement and for other bodily impairments that do not reduce earnings, perhaps pursuant to a schedule of benefits like those

Since the vehicle owner would be purchasing such additional coverages largely for himself, his family and friends, he would have the incentive and the information needed for an intelligent decision as to what insurance to buy beyond the compulsory minimum.¹⁶¹

The availability of optional coverages need not be limited by what insurers volunteer to sell. In the last two years, the New York State Legislature has wisely broken with the traditional notion that insurers should be compelled by law to sell only what the public is compelled by law to buy. Instead, the Legislature has required the industry collectively to make certain essential coverages available while leaving the citizen free to buy or not.¹⁶² This approach would always be available to the Legislature if the public wanted additional types of auto-

now used in accident insurance. Optional coverage for other than net economic loss could also be written to pay for other aspects of what is now called "pain and suffering," in the unlikely event that it is capable of objective translation into dollars. Finally, optional coverage for other than net economic loss could pay for medical expense or income loss that was compensable from another source. While we excluded such redundant benefits from the proposed compulsory insurance, we see no "moral hazard" or other public policy reason for preventing the vehicle owner or anyone else from purchasing such redundant benefits if he wants to. The residual liability situations for which higher limits of liability insurance could be purchased would be liability for wrongful death (*see* note 139 *supra*) and liabilities incurred when driving outside this State in jurisdictions retaining fault law for automobile accidents (*see* pp. 98-99 *infra*).

161. The policyholder would be mainly insuring himself and his family, for an estimated 79% of the people injured in automobiles are either the owner or a relative of the owner of the automobile in which they are injured. *See* A.I.A. REPORT, *supra* note 25, at 16. As to the extent to which people will voluntarily insure themselves, New York Insurance Department statisticians estimate that, of all private passenger automobiles registered in this State and insured outside the assigned risk plan, about 75% now carry optional, first-party, no-fault fire, theft and comprehensive insurance; 70% now carry optional, first-party, no-fault medical payments insurance; 70% now carry fault liability insurance in excess of the compulsory amounts; and 50% now carry optional, first-party no-fault collision insurance. *See also* note 94 *supra*.

162. *See* N.Y. INS. LAW §§651-658 (McKinney Supp. 1969) (fire and extended coverage insurance for central city properties) and N.Y. INS. LAW §63 (McKinney Supp. 1969) (automobile assigned risks). For discussions of the principle, *see* N.Y.S. INS. DEPT., FIRE INSURANCE IN CONGESTED AREAS — A SECOND REPORT (Dec. 29, 1967); N.Y.S. INS. DEPT., THE PUBLIC INTEREST NOW IN PROPERTY AND LIABILITY INSURANCE REGULATION, *supra* note 118, at 34-36.

mobile insurance that insurers were unwilling or unable to sell in sufficient volume.¹⁶³

Fair Settlement of Claims

Under our proposed system, the claimant against an insurance company would in most cases be that company's own policyholder or a member of his family.¹⁶⁴ The standards for entitlement to benefits would be clear, as would the amount of such benefits.¹⁶⁵

Under these circumstances, insurers would have little legitimate reason for delay in payment or for offering a claimant far less than the claim was worth.

163. It goes without saying that, as under present law, the insurance industry, through the assigned risk plan, would have to make available the compulsory automobile insurance coverages. *See* N.Y. INS. LAW §63 (McKinney Supp. 1969). Alternatively, the unmet demand for compulsory coverages could be served through a reinsurance facility of the type recently established in the Province of Ontario for automobile insurance. The Ontario approach would have the advantage of doing away with whatever stigma now attaches to being an "assigned risk." It would enable every motorist to buy insurance in the normal market, with the writing company having the option of ceding the risk to a reinsurance pool of all automobile insurers.

164. *See* note 161 *supra*.

165. *See* pp. 84-89 *supra*. Insurance policy forms, subject to Insurance Department approval, would supply still more details of implementation. Of course, some disputes between claimants or insureds and insurance companies may be expected to arise under the proposal and litigable issues, *e.g.*, whether the loss arose from the use of a motor vehicle, would be submitted to the traditional forum of a court with jury. The proposal is designed to minimize litigable issues but it would not establish a new decision-making forum (neither an administrative board nor a compulsory arbitration scheme) in competition with the courts. In this regard, we concur with the expressed views of the Administrator of the State's Judicial Conference:

"[T]he judicial system is best capable of administering any reasonable system of dealing with the automobile accident field. Thus, even if constitutional and statutory changes were to be enacted which would totally alter our present system of automobile liability insurance and our present set of principles of tort law governing automobile negligence, the courts could most efficiently administer such a new system . . . [T]here is much to be said for retaining supervision over the disposition of disputed automobile accident claims in the court system, even if a 'no-fault' concept were adopted . . ."

Letter from Thomas F. McCoy, State Administrator, The Judicial Conference of the State of New York, to N.Y.S. Ins. Dept., Nov. 10, 1969.

It would then be practicable to impose on insurers heavy sanctions for unfair treatment of claimants. We recommend that any claim whose payment was unreasonably delayed or resisted bear interest at a very high rate, on the theory that the claimant had been coerced into making a loan to the insurance company.¹⁶⁶

Limited Territorial Applicability

The proposed New York law for compensating automobile accident victims should affect accidents in this State — all of them but no others.

New York State's present compulsory insurance law applies to all motor vehicles driven in the State, regardless of where the vehicle is registered or where its owner or driver lives.¹⁶⁷ Similarly, traffic regulations and many motoring costs are determined by the state in which the motoring takes place.¹⁶⁸

In keeping with this established pattern, we have concluded that a basic change in the treatment of automobile accident costs, such as the one we are proposing, should apply equally to all vehicles driven in this State, regardless of where they come from. Out-of-state vehicles would have to carry the compulsory first-party insurance coverage for operation in this State.¹⁶⁹

166. The figures can be set at whatever levels seem best to balance the interests of claimants against those of insurance companies and their premium payers. We would suggest that the interest rate be the maximum allowed on small loans, or that it be some multiple of the prime rate of interest or of the usury rate.

167. N.Y. VEHIC. & TRAFFIC LAW §§310, 311, 318, 319 (McKinney 1960), as amended (Supp. 1969).

168. Examples are speed limits, road signs, limitations on highway use, definition of and penalties for traffic crimes and offenses, and such elements of the cost of driving as highway and bridge tolls, gasoline taxes and requirements for anti-pollution devices. This approach is generally consistent with the territorial basis of modern political jurisdiction and with the territorial, rather than personal or tribal, nature of modern systems of civil and criminal law. Our proposal, like any other system of dealing with accident law at the state level, would inevitably raise some interstate and conflict-of-law problems in atypical situations.

169. Such protection could be written as a "rider" to the regular liability insurance policy on the out-of-state vehicle or as a general statement in the

Conversely, New York accident law would not follow New York motorists out of the State.¹⁷⁰ New York vehicles, when driven outside the State, would be under the accident law of the state or country in which the accident occurred, just as is now the case. They would be required by New York law to carry liability insurance for such situations, as is now the case.¹⁷¹

Making the proposed system coterminous with the boundaries of the State would place all automobile accidents in this State under the same system of compensation and cost allocation, and would not interfere with the freedom of other states to decide for themselves how to handle the cost of accidents on their roads.

Conclusion

To meet the criteria for a good system, we recommend a system of compensating virtually all drivers, passengers and

policy that it would cover legal obligations under the varying automobile accident reparations laws of the various jurisdictions in which the vehicle might be driven. The proposed requirement of insurance on out-of-state cars driven here could not, as a practical matter, be perfectly enforced, any more than the State's present requirement of liability insurance on such cars is perfectly enforced. For the ways of covering such insurance "gaps," see note 137 *supra*.

170. New York car owners could, of course, buy first-party insurance for out-of-state accidents if they wished to. All we propose is that they not be compelled by New York law to make the purchase.

171. N.Y. VEHIC. & TRAFFIC LAW §§311, 316 (McKinney 1960), as amended (Supp. 1969). To permit comparison of our proposal with the present fault insurance system, we have used the present compulsory liability insurance limits of \$10,000/\$20,000/\$5,000 for the proposed out-of-state residual liability insurance element. We recognize that making compulsory the insurance against liability for out-of-state driving is inconsistent with the otherwise strictly territorial application of our proposal, and the Legislature might reasonably prefer not to require its purchase. We have included it in our proposed compulsory coverage mainly for reasons of continuity, since New York motorists are accustomed to insurance which protects them against liability when driving outside the State, and in order to avoid any appearance of exaggerating the premium savings under our proposal. When the compulsory insurance law was first enacted in this State, the question of insuring out-of-state liabilities did not come up as a separate question, because the proposal then was just to compel motorists to buy an existing liability insurance policy which made no territorial distinctions.

pedestrians in full for their net economic loss from automobile accidents.

The proposed system is designed to be simple to operate, with clear standards of entitlement, clear measures of recovery and a minimum of transactions.

Once the victims are compensated, we recommend a secondary shifting of certain accident costs to commercial vehicles and to a few obnoxious categories of drivers — in the interest of safety, economy and fairness.¹⁷²

172. Compensation of victims would come first. Shifting of costs would come second. One might think of our proposal as involving three levels of liability for automobile accident costs:

(1) Passengers and pedestrians would be able to recover compensation from the insurer of the car in or by which they were injured. When two or more private cars collided, each would provide for its own occupants; there would be no cost shifting among them.

(2) Owners of commercial vehicles would, as would owners of private cars, be responsible, by insurance, for accident losses to occupants and pedestrians. Further, if a commercial vehicle were in an accident with a private car, the commercial vehicle's insurer would be subject to a claim by the insurer of the private car for whatever payments it had made on account of the accident. Where two or more commercial vehicles collided, there would be no cost shifting among them.

(3) Drivers in the strict liability categories (*e.g.*, drunks) would be liable, by insurance or otherwise, for a shifting of costs from the insurers of other vehicles (commercial or private passenger) involved with them in an accident.

EVALUATION OF THE PROPOSAL

The plan set out in the preceding section was derived from the priorities and criteria developed earlier in this Report.

Before evaluating our proposal to see how it accords with those priorities and criteria, we want to set the perspective by emphasizing one point: the fault insurance system is so bad, and its defects so fundamental, that any change, to be a real improvement, must itself be fundamental. It has to face up to, and deal with, the inherent contradictions in the fault insurance system — old law to make wrongdoers pay, overlaid with universal insurance to make sure wrongdoers do not pay, overlaid with irresistible social pressure to compensate victims.

The evils of the fault insurance system today are inherent in its dependency on case-by-case determinations of fault as the touchstone of compensation. A change will be a real improvement almost in proportion as it rejects case-by-case determinations of fault.¹⁷³ Once that is done, the insurable event can be rationalized and resources can be allocated in accordance with humane priorities consciously set.

173. In recognition of that fact, many of the leading proposals made over the years for the reform of automobile insurance have, in whole or part, discarded "fault" as the standard for payment. For some of these proposals, see 1 & 2 BRITISH COLUMBIA, ROYAL COMMISSION ON AUTOMOBILE INSURANCE, *supra* note 44; COLUMBIA UNIV. COUNCIL FOR RESEARCH IN THE SOCIAL SCIENCES, *supra* note 44; L. GREEN, *supra* note 9; KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29; A.I.A. REPORT, *supra* note 25; Ehrenzweig, *supra* note 156; Franklin, *Replacing the Negligence Lottery: Compensation and Selective Reimbursement*, 53 VA. L. REV. 774 (1967); Hofstadter & Pesner, *supra* note 28; Morris & Paul, *supra* note 41. Two North American jurisdictions have enacted no-fault compensation plans — the Canadian province of Saskatchewan and the Commonwealth of Puerto Rico in the United States. See The Automobile Accident Insurance Act, 1963, Stat. Sask. ch. 38 (1963), as amended, ch. 51 (1964); Aponte & Denenberg, *The Automobile Problem in Puerto Rico: Dimensions and Proposed Solution*, 35 J. RISK & INS. 227 (1968); The Automobile Accident Social Protection Act, H.B. 874, No. 138 (June 26, 1968). See also W. ROKES, AUTOMOBILE INDEMNIFICATION PROPOSALS: A COMPENDIUM (1968).

One final and related point before moving to a detailed evaluation of our proposal. There are no perfect plans. Around the edges of any new system it will always be possible to conjure anomalous situations and strange results. But that is due to the complexity of the problem, and should not be a cause for despair. Nor should it be an excuse for endless disputation about fringe anomalies while the fault insurance system, anomalous to the core, remains unchanged.

The best we can do is to decide upon criteria for a good system and then, when inevitably choices among criteria have to be made, to make the choices according to sensible priorities. If we can do that much, we will have done a lot and we will have done all we can do. It will then be time to act.

At this point it should be useful to consider how the proposed plan measures up to each of the criteria. The following discussion will take up the criteria in the same order in which they were set out earlier in the Report.

Compensation for All Victims

We saw earlier that, from the point of view of the accident victim, a system of handling the cost of automobile accidents should compensate all accident victims.¹⁷⁴

We saw that the fault insurance system denies compensation entirely to about 25% of all accident victims.¹⁷⁵ The contributory negligence rule bars recovery where the claimant was partly to blame for the accident. The rule is harsh and unrealistic by modern standards, but at least, within the context of the fault insurance system, it is not an absurdity.

What is an absurdity as well as being harsh and unrealistic is the other rule that excludes some victims from benefits. It is the most fundamental of all the rules of the fault insurance system — that the victim gets benefits only if he can prove

174. See pp. 62-63 *supra*.

175. See p. 18 *supra*.

somebody else was at fault in the accident. Once liability insurance is widespread, so that the person who was at fault does not himself have to pay, it is nonsensical to have the victim's right to compensation, regardless of the victim's need and regardless of his innocence by any conceivable standard, depend on whether he can find someone else to blame.

Our proposal would compensate nearly every victim who suffered net economic loss.¹⁷⁶ The only exception would be the victim who intentionally caused the accident or who was injured while committing a felony.

Generous Benefits

We saw earlier that, from the point of view of the accident victim, a system should compensate him as fully as possible for his loss.¹⁷⁷

In the context of compensation and not vengeance, we concluded that higher priority should be given to economic loss than to non-economic matters, and to losses not otherwise compensated than to those already paid from another source.

We saw that the fault insurance system allocates resources in a way almost exactly opposite to the priorities. It leaves many victims, who are entitled to benefits under its own rules, with too little compensation.¹⁷⁸

The proposed plan should meet the criterion of generous benefits very well. By reducing transaction costs and minimizing the misdirection of benefits, the proposed system makes so much money available that it can compensate nearly all victims and can pay them in full for their net economic loss.

The minimum compulsory insurance under the proposed system should compensate virtually 100% of the net economic loss resulting from personal injury in automobile accidents.¹⁷⁹

176. See pp. 84-85 and note 156 *supra*.

177. See pp. 63-64 *supra*.

178. See pp. 27-29 *supra*.

179. See pp. 85-89 *supra*.

It should compensate virtually 100% of the damage to property other than automobiles. The proposed compulsory insurance would not compensate the owner for damage to his own vehicle, as our proposal does not compel the owner to insure his own property, but leaves it up to him.

Efficiency

We saw earlier that, from the point of view of both the victim and the consumer, a system of handling the cost of automobile accidents should be efficient.¹⁸⁰

We also saw that the fault insurance system was inefficient almost beyond belief.¹⁸¹

The plan proposed in this Report should meet the criterion of efficiency very well. It should increase efficiency in the sense of getting a larger share of the premium dollar through to where it is needed — both by reducing transaction costs and by minimizing misapplication of benefits.

Specifically, the improvements over the fault insurance system in personal injury insurance, which is compulsory under the fault insurance system and would be compulsory under our proposal, should be as follows.

Transaction costs should be reduced from the present 56 cents out of the personal injury premium dollar to about 43 cents. These percentages, which are a basis of the projected premium savings discussed later in this Report, are very conservative and almost certainly understated, especially in the long run. The estimated reduction in transaction costs comes from reduced claims adjustment expenses only. In the long run, a simplified automobile insurance system should lead to greater efficiency elsewhere in the operations of insurers.¹⁸²

180. See pp. 64-65 *supra*.

181. See pp. 34-37 *supra*.

182. For the figure of 56 cents, see p. 35 *supra*. The reduction of 13 cents of the personal injury premium dollar under our proposal is due to lower an-

The misapplication of benefits would be reduced by making the compulsory automobile insurance secondary to other sources of compensation, and by eliminating payment for non-economic matters under the proposed compulsory coverage. The effect would be a coordination of benefits between automobile insurance and the other sources of medical and income loss indemnity, and a concentration of available reparations dollars on net economic loss. The saving would be about 29.5 cents out of the personal injury premium dollar.¹⁸³

Taken together, these increases in efficiency mean that, in place of the 14.5 cents out of the premium dollar the victim now gets as net economic benefits, he could expect some 57 cents. The efficiency savings would be available for increased benefits to victims for net economic loss or for reduced premiums to consumers.¹⁸⁴

Low Premiums

From the viewpoint of the insurance consumer or policyholder, premiums should be low.¹⁸⁵

Premiums under the fault insurance system are high and are rising fast.¹⁸⁶

anticipated claims adjustment expenses for both claimants and insurers. For one possible kind of efficiency saving which we have not counted in our estimates, *see* note 191 *infra*. For actuarial details, *see* Appendix B and materials there cited. Loss adjustment expense itself would be reduced further if our proposal did not have to retain the fault insurance system for death cases and for out-of-state driving. *See* notes 133, 139, 171 *supra* and accompanying text.

183. The saving shown is the sum of the estimated 8 cents which currently goes for duplication of benefits and the 21.5 cents which pays for non-economic loss. *See* p. 36 *supra*.

184. For the 14.5 cents figure, *see* p. 36 *supra*. The 57 cents figure is the complement of the 43 cents transaction cost figure (*see* text accompanying note 182 *supra*). Under our proposal virtually 100% of the amount available from the premium dollar for benefits would in fact be paid to the victim in net economic benefits.

185. *See* p. 65 *supra*.

186. Inflation would affect any automobile reparations system. In inflationary periods, it is especially important that a reparations system be as efficient as possible in delivering benefits to victims, that it pay victims fully for net economic

Once a system is efficient, so that premium dollars are not wasted, the question becomes one of priorities. What are we willing to forego in benefits in order to get a given saving in premiums?

The big economies under our proposal come from reducing frictional costs and from foregoing redundant and non-economic payments. Part of these economies is devoted to increasing benefits to victims for net economic loss. Part is devoted to reducing premiums for consumers.

How much will premiums be reduced? Consumers will want to know, and have a right to know, how much they will have to pay in premiums under any new system compared to what they pay now.

The premium rates needed to support the fault insurance system are known. The premium rates needed to support any proposed new system must, of course, be estimated. In order to make available to consumers premium rate information about our proposal for purposes of comparison, we have estimated the premium rates that would be called for under the plan proposed in this Report.

Our actuaries have estimated premium levels under the proposed plan for the compulsory coverages and have compared them with premium levels for compulsory insurance under the fault insurance system.

Second, the actuaries have compared the premiums for the proposed compulsory insurance with the premiums which would be charged under the fault insurance system for a level of benefits for net economic loss comparable to what we propose.

Third, the actuaries have estimated premium levels under the proposed plan for the compulsory coverages plus a reason-

losses, and that cost allocation bear some relationship to ability to pay. Moreover, since benefits under our proposal are directly related to economic loss, the development of systematic and rational cost control mechanisms would be facilitated. *See also* pp. 70-71, 85-89 *supra*.

able set of optional coverages, and have compared them with the premiums under the fault insurance system for the amount of insurance the average New York motorist now carries.

We emphasize that the figures as to premium levels are, and must be, estimates. We believe they are the best estimates that can be made today, that they give a meaningful picture of how the proposal compares with the fault insurance system, and that they are more than sufficiently reliable for purposes of public and governmental decision-making. But still they are estimates, not precise measurements of indisputable facts.

The comparisons here are of average premium levels, followed by a few general comments on how the premium savings would be apportioned among individual consumers differently situated. A more detailed breakdown — by age, income level, family circumstances and place of residence — is in Appendix A to this Report. Overall cost data and a discussion of actuarial methodology are in Appendix B.

(a) *Compulsory Coverages*

We have compared the price of the compulsory coverages under our proposal with the price of the liability insurance which is compulsory in New York State today, first as to personal injury, then as to property damage and then for the two combined.¹⁸⁷

The cost of our proposal with respect to compulsory personal injury coverage should average about 42% less than the cost of compulsory personal injury liability coverage under the fault insurance system.

187. The compulsory coverages under the fault insurance system in New York are (i) \$10,000/\$20,000/\$5,000 bodily injury and property damage liability, and (ii) uninsured motorist coverage. Under our proposal, the compulsory coverages would be (i) full coverage for net economic loss for personal injury, (ii) \$10,000/\$20,000/\$5,000 bodily injury and property damage liability coverage for out-of-state driving and wrongful death cases; and (iii) full coverage for strict liability for damage to property other than automobiles. Other relevant data are given in Appendix B and materials there cited.

With respect to property damage, our proposal should result in an anticipated average premium reduction of 87% on compulsory coverages. This saving is not due to increased efficiency, but chiefly to the fact that, under our proposal, the first-party nature of insurance for damage to an automobile makes it unnecessary for the law to compel purchase of such insurance.

Taking compulsory personal injury coverage and compulsory property damage coverage together, the average premium under our proposal should be about 56% less than it is under the fault insurance system.

(b) *Comparable Benefits*

The compulsory insurance under our proposed plan would pay unlimited benefits to all victims for net economic loss due to personal injury.

The fault insurance system cannot pay all victims, because of the exclusions inherent in fault law, but it could be expanded to pay unlimited benefits simply by removing from the insurance policy the limits on liability for personal injury, and making the unlimited policy compulsory.

If the fault insurance system were simply expanded so that it paid unlimited benefits, its premiums would be almost one and a half times what they are today and more than twice the estimated premiums under our proposal. If the fault insurance system were further expanded to pay such benefits to all victims (*i.e.*, without the fault law exclusions), its premiums would be almost twice what they are today and about two and a half times the estimated premiums under our proposal.¹⁸⁸

188. The comparisons are for personal injury coverages. The premium rates for an unlimited liability policy have been assumed to be the present bureau rates for a policy with \$300,000/\$300,000 limits (*i.e.*, 1.4 times the comparable rate for a policy with \$10,000/\$20,000 limits), the highest limits generally offered. Premium rates for a policy paying unlimited benefits under the fault insurance system to all victims without regard to fault are based on the estimate that 25% of accident victims receive no compensation under the fault insurance system. See note 25

The foregoing is not so much a cost comparison of practicable, equivalent insurance programs as it is a dollars-and-cents demonstration that, if the goal of an accident reparations system is full compensation of net economic loss, the fault insurance system, with its inefficiencies and misallocations of resources, does not provide a framework within which the goal can be attained.

(c) *Compulsory Plus Optional Coverages*

Today most New York drivers purchase automobile insurance beyond the kinds and amounts required by law.

We have, therefore, compared anticipated premium levels under our proposal with premium levels under the fault insurance system for an average vehicle owner who carries both the compulsory insurance and a reasonable amount of extra, optional coverage.¹⁸⁹

Such a typical individual could expect to save 53% on the personal injury portion of his combined (compulsory and optional) coverages and 16% on the property portion, for an average overall saving of 33%.

supra. Further data are in Appendix B. The figures in the text understate the expensiveness of such an expansion of the fault insurance system since rates for a bodily injury policy with no limits would be higher than those for \$300,000/\$300,000, and would also be increased to reflect the lowering of underwriting standards, and worsening of loss frequency, if such a policy were made compulsory and hence available through the assigned risk plan.

189. The typical combination of compulsory and optional coverages purchased by New York motorists today is, in the opinion of Department actuaries, closest to (i) \$25,000/\$50,000/\$5,000 bodily injury and property damage liability; (ii) uninsured motorist coverage; (iii) \$1,000 medical payments; and (iv) collision insurance (with a deductible averaging slightly more than \$50). The most nearly comparable combination of coverages under our proposal would be (i) full coverage for net economic loss from personal injury; (ii) \$25,000/\$50,000/\$5,000 bodily injury and property damage liability coverage for out-of-state driving and wrongful death cases; (iii) \$1,000 medical payments for out-of-state driving; (iv) full coverage for strict liability for damage to property other than automobiles; and (v) collision insurance (at the same average deductible). It should be noted that while "collision insurance" has essentially the same legal meaning in both systems, it would under our proposal be paying for much of what is today covered by property damage liability insurance as well as what is today covered by collision insurance. Further data are in Appendix B and materials there cited.

(d) *Individual Differences*

Insurance premium rates are calculated on the basis of the anticipated frequency and the anticipated severity or size of future claims.

Under the fault insurance system, the size of future claims is largely random, depending for the most part on the economic and other circumstances of an unknown victim. Premium rate differences under the fault insurance system thus have to be calculated almost exclusively on the basis of anticipated accident frequency. As a result, premium rates for different policyholders under the fault insurance system do not reflect the economic circumstances of the policyholder.

Under the plan proposed in this Report, however, the economic circumstances of the vehicle owner and his family (who are his usual passengers) would be directly relevant both to the likely net medical expense and to the likely net income loss in case of an accident.¹⁹⁰

The general result would be that, under the proposed plan, policyholders with low incomes would pay lower premiums than policyholders with high incomes. Policyholders with generous collateral sources of medical and wage loss benefits (*e.g.*, under liberal employee fringe benefit programs) would pay lower premiums than policyholders without such collateral sources. And policyholders with little or no employment income and with substantial collateral benefits (*e.g.*, retired persons) would pay the lowest premiums of all.

The provisions of the proposal for damage to automobiles would have the same progressive tendency. The vehicle owner

190. Individual premium rates under our proposal would be responsive to both the economic circumstances of the policyholder and his anticipated accident frequency. Thus, if young male drivers continue to be involved in more accidents than other drivers, a rational rate classification system would recognize that difference. Merit rating could also continue to be used. See note 96 *supra*.

"[I]t would seem that rating drivers on their experience — *i.e.* higher premiums for poor drivers and lower premiums for good drivers — could be made a part of a first party insurance system."

N.A.I.C. REPORT, *supra* note 44, at 102.

would be buying insurance for his own car. Owners of inexpensive and old cars would pay lower premiums than would owners of new and expensive cars.

The premium savings indicated above do not include any savings from group selling of automobile insurance.¹⁹¹

Internalization of Costs

We saw that, for reasons of fairness and of good economic resource allocation, the accident costs of an activity such as motoring, or of particular categories of motoring, should be allocated or internalized to the activity or category.¹⁹²

Perfect internalization of automobile accident costs to the activity of motoring would call for all losses due to automobile

191. Most automobile insurance is sold today on an individual basis. Insurance company transaction costs (exclusive of claims adjustment expenses) under this form of distribution average 33 cents of the premium dollar. See p. 34 *supra*. In the past, in New York and other states, various "group selling" programs have been attempted, but the relevant laws were sometimes construed to prohibit premium reductions based on the economies of distributing personal insurance on a mass, as distinguished from an individual, basis. That interpretation has now been rejected in New York. See 110th ANN. REP. OF THE SUPT. OF INS., *supra* note 119, at 26-27. Today there are no legal or regulatory impediments in this State to passing on to the consumer, in the form of reduced premium, any savings realized by group selling. While the development of group marketing will not be impeded by regulatory or legal problems, it remains unclear whether large numbers of consumers will prefer to purchase automobile insurance at a lower cost on a group basis, or whether they will be willing to pay the additional costs of individual selling in return for greater individual service.

Consumer choice between forms of selling is not directly affected by the kind of automobile insurance system. Some authorities believe there could be secondary effects, in that if automobile insurance moved away from the fault system to a compensation system, then insurance companies, employers and unions would be able to bring to bear on the group selling of automobile insurance techniques already highly developed in group health insurance. See N.A.I.C. REPORT, *supra* note 44, at 107; Baile, *The Advocates*, transcript of television broadcast, Nov. 9, 1969; INSURANCE ADVOCATE, Oct. 4, 1969, at 12. If so, the adoption of our proposal could be expected to accelerate group selling, which could be expected to reduce transaction costs under our proposal by perhaps an additional 10 cents of the premium dollar. A countervailing consideration is that a compensation system, with lower premiums, less legal compulsion to buy insurance and predominantly first-party claims settlement, might give greater scope to individual service and lessen public resistance to paying premiums, a resistance which is certainly one force moving insurers toward group selling.

192. See pp. 65-68 *supra*.

accidents to be compensated through automobile insurance. In that sense, the criterion of internalization is met neither by the fault insurance system nor by our proposal. The fault insurance system does not do so because it pays no compensation or too little compensation to so many victims. Our proposal does not do so because it has automobile insurance secondary to other sources of compensation.

Here we forswore perfect internalization of costs in order to attain greater efficiency, fuller compensation and lower premiums.

One key to increased efficiency is the elimination of overlapping benefits, and, therefore, it was necessary to make either automobile insurance, on the one hand, or medical and disability income plans, on the other hand, defer to the other. We chose to make the compulsory, minimum automobile insurance secondary to the other sources. This approach should facilitate the integration of benefits, while letting insurance mechanisms of proven high efficiency continue to provide basic health and income coverages. It also permits the new plan to give full compensation to the seriously injured and still to reduce automobile insurance premiums sharply.

Finally, by not mandating that automobile insurance benefits either be primary to, or overlap with, other sources, our proposal leaves the greatest latitude for voluntary arrangements beyond what is mandated by law. Automobile insurance could evolve into a primary coverage, either directly or indirectly. Automobile insurance that was, by its own terms, primary to other sources of compensation would more than comply with the proposed compulsory insurance law. And individuals or groups desiring to make their automobile insurance primary could also do so indirectly, simply by modifying their other medical and income loss coverages to make them secondary to automobile insurance.

Our proposal would not internalize to the activity of motor-ing all of the economic loss costs of that activity, but it would

internalize far more of them than does the fault insurance system—some 75% as against 50% for the fault insurance system.¹⁹³

The fact that the fault insurance system charges higher premiums does not mean that the fault insurance system does a good job of internalizing accident costs, for those premiums are transmitting not accident costs so much as added and frictional costs of the system itself.

Under our proposal, it becomes possible to internalize or allocate costs to categories of motoring, in accordance with conscious economic decisions.

Our proposal makes that kind of cost allocation decision with respect to commercial vehicles.¹⁹⁴ The owner of a commercial vehicle can more efficiently avoid, reduce, absorb or transfer accident costs than can the owner of a private passenger car, both in how he can influence driving conduct and even vehicle design and in how he can spread accident costs by adding them onto the price of his goods or services. Moreover, the imposition of strict liability would preclude a wind-fall saving in premiums that would otherwise go to certain kinds of commercial vehicle operators in a change from the third-party fault insurance system to a largely first-party compensation system.¹⁹⁵

The second special cost allocation which we propose—to drunken drivers and other particularly obnoxious categories—is discussed below in connection with reducing accident costs.

Prompt Payments

An accident reparations system should be able to deliver benefits quickly after loss has been sustained.

193. Derived by Insurance Department actuaries from figures in sources cited in note 59 *supra*, and from Appendix B and materials there cited.

194. See pp. 90-92 *supra*. For a discussion of subcategory internalization, see G. CALABRESI, *supra* note 19, at 145-47, 246-50.

195. See N.A.I.C. REPORT, *supra* note 44, at 103; Kemper, *Automobile Insurance: The Criteria for Survival*, 1968 INS. L. J. 264, 266.

The fault insurance system is, as has been seen, extremely slow.¹⁹⁶

The proposed plan would meet the criterion of speed very well. There would be no need for delay in establishing the obligation of the insurance company to pay. Fault, with all its evidentiary complexities, would not be an issue. Moreover, the measure of payment would usually be objective and easily ascertainable—lost income plus medical bills plus payments for substitute services, minus collateral benefits and the tax offset.¹⁹⁷ The delays caused by bargaining over such indefinite measures of payment as general damages or pain and suffering would be eliminated.

Periodic Payments

As we have seen, a good reparations system should pay benefits periodically as losses and expenses accrue, rather than all at once in a lump sum.¹⁹⁸

Periodic payments encourage physical and vocational rehabilitation and take needless guesswork out of the determination of loss in cases of serious injury.

The fault insurance system pays benefits in a lump sum.

The proposed plan would pay benefits periodically.

Reliability

An automobile insurance system should be reliable and predictable, so that the victim can be sure whether and, if so, how much he will be paid, and so that the consumer can be sure of getting and keeping the insurance protection he needs.¹⁹⁹

196. See pp. 19-22 *supra*.

197. See pp. 85-88 *supra*.

198. See p. 69 *supra*.

199. See pp. 69-70 *supra*.

We saw that the fault insurance system—with its delays and its uncertainties both as to liability and as to size of awards — is most unreliable and unpredictable.²⁰⁰

The new system proposed in this Report should meet the criterion of reliability very well. For the victim, the rules for determining who is entitled to payment would be simple. The measure of payment would be objective and, in most cases, quite clear.

The consumer should find insurers more willing to write insurance, as more of the information needed for sound underwriting and rating would be available. Once he had insurance, the consumer would have the advantage of a continuing business relationship, as to both premiums and claims, to help keep his insurance in force and to keep it reliable.

Stability

An accident reparations system should be self-stabilizing and not, as is the fault insurance system, full of goads to anti-social conduct by insurers.²⁰¹

The proposed new plan would be far simpler and more stable than the fault insurance system. It would tend to reward rational behavior by insurers, and should be relatively easy to keep under government surveillance and to influence systematically in accordance with public policy.

There are several reasons. The entitlement to payments and the amount of payments would, in most cases, be quite clear. The elements of probable cost, particularly medical and income continuation, would be more readily ascertainable by the insurer at the time of underwriting, so that more rational underwriting and rating would be possible. The insurer would usually be dealing with its own policyholder or his family. The insurable event would, far more than is now the

200. See pp. 22-24 *supra*.

201. See pp. 70-71 *supra*.

case, be within the knowledge and control of the insurance company. Finally, in such a generally stable business environment, it becomes practicable and appropriate for government to impose severe penalties for claims chiseling or other aberrant behavior by insurers.

Helping Prevent Accidents and Reduce Accident Costs

We earlier determined that a desirable automobile accident reparations system would so affect driving or the severity or aftermath of accidents as to reduce accident costs, or would use up less money for overhead expenses or transaction costs of running the reparations system.²⁰²

The fault insurance system, in light of its history, theory and practice, could hardly be expected to have a beneficial effect on driving.²⁰³ The inefficiencies of the system add unnecessary transaction costs.

The plan proposed in this Report would, quite clearly, reduce accident costs by reducing transaction costs and by promoting medical and vocational rehabilitation.

It should also influence driving and vehicle design in favor of traffic safety and lower accident costs.

As to encouraging good driving, the main responsibility would continue to be with traffic law and its enforcement and with the licensing of drivers. But the mythology of deterrence under the fault insurance system would at least be out of the way. And the proposed system would hold real promise of improved driving.

It is true that, once a man is behind the wheel on a given occasion, any apprehensions he might have about insurance premium levels do not affect his driving.²⁰⁴ But a system of allocating accident costs may be able to influence his decision

202. See pp. 71-73 *supra*.

203. See pp. 12-13 *supra*.

204. See notes 20 and 96 *supra*.

whether to get behind the wheel on a given occasion and may otherwise influence the circumstances under which he drives. In two principal respects, the proposed plan might lead to safer driving.

First, for reasons of good cost allocation, we proposed strict liability for commercial vehicles.²⁰⁵ Certain owners of commercial vehicles have considerable influence over the conditions under which those vehicles are driven, the number of hours their drivers are behind the wheel, and even the design of commercial vehicles. The prospect of strict liability should induce commercial operators to exercise their economic power on the side of highway safety.

Second and more significantly, the proposed strict liability for drunken drivers, together with the separate rating of their optional indemnity insurance, should lead social drinkers and their families to arrange more often than is now the case for someone who had not been drinking to do the driving.²⁰⁶ To the extent the strict liability failed to deter drunken driving right away, premiums for the liability insurance for drunken driving would then go up, perhaps to very high levels, and society would begin to price the drunken driver off the road entirely. These economic deterrents to drunken driving would reinforce the law's other sanctions — license revocation and criminal prosecution.

With respect to vehicle design, the proposal would be even better able to improve traffic safety and reduce accident costs.

Recently much attention has been called to the impact of automobile repair costs on insurance premiums, and to the connection between automobile design and ornamentation and the tendency of the automobile to require expensive repairs after even a slight collision.²⁰⁷ Automobile property damage

205. See pp. 67-68, 72, 91-92 *supra*.

206. See pp. 67, 71-72, 92-95 *supra*.

207. See note 123 *supra* and accompanying text.

liability insurance—because it pays for damage to a stranger's car—cannot make premium rate distinctions among different makes and models of automobile according to their differing capacities to withstand collisions or according to differences in the ease and economy of repairing them once they are damaged. But under our proposal, the vehicle owner would be buying insurance exclusively for his own car, whose make, model and year are known in advance. The proposal would thus give insurance companies the necessary data and the competitive incentive to vary rates according to damage-resistance and repairability of different kinds of car, and should thereby encourage improvements in vehicle design.

The same would be true of vehicle design to minimize personal injury after a crash. Insurance companies would have data on the seriousness of injuries suffered in the particular make and model of car being insured, and could set premium rates accordingly.

In general, under our proposal insurers would know, as they can never know under a liability system, exactly what car they would end up paying for — both as to injury to its occupants and as to damage to the car itself. They would know, as they can never know under a liability system, exactly the make and model whose protection of occupants, resistance to damage and ease of repair they should reflect in their premium rates. This knowledge would enable the automobile insurance industry, which has long given constructive support to the traffic safety efforts of others, to bring its own immense financial power to bear directly upon the vehicle design aspects of the traffic safety problem. Safety might begin to sell after all.

Consumer Choice and Influence

Any automobile insurance system should afford the consumer the widest range of informed choices, should subject

him to as little compulsion to buy insurance as is compatible with other objectives, and should give him as much influence as possible over the quality of what he buys.²⁰⁸

Under the fault insurance system the buyer of automobile liability insurance is paying premiums for an insurance that will pay benefits to someone else. The consumer has no way, and really no incentive, to insist that his insurance be of high quality when it comes to paying benefits. Often he does not even know whether benefits are paid or to whom. All the consumer can see with any accuracy is the price, or premium level, of the insurance. There, he encounters the restrictive underwriting standards of automobile insurers and might well wonder, when shopping by price, whether he is selecting insurers as much as insurers are selecting people.

Because of the conflicting interests of consumers and victims under the fault insurance system, government has found it necessary to place consumers under more and more compulsion to buy insurance in order for the system to compensate victims more fully. The social pressure to compensate victims is, and should be, so great that if the fault insurance system is retained the certain prospect is for even more legal compulsion to be exerted on consumers to buy insurance.²⁰⁹

Compulsion to buy insurance would be less necessary under the new proposal than under the present system. When responsible consumers can see where their interest lies, they will take steps to protect it on their own initiative.

We have recommended that certain coverages be compulsory for personal injury and damage to property other than automobiles, for there the interests of others and of society are also involved and should be protected.

But in a system where people are insuring themselves, less compulsion is needed. Hence we can leave on an optional

208. See pp. 73-74 *supra*.

209. See pp. 45-48 *supra*.

basis coverages of lower social priority, confident that car owners will be well situated to make an informed decision whether to buy them. This is true of insurance giving benefits for personal injury of kinds and amounts not required by law. It is even more true of insurance for damage to one's own car. Such insurance would, under our proposal, be purely first-party, not involving losses or benefits to anyone else.

The proposed plan would avoid much of the present contrariety of interest between consumers and victims. The consumer would be buying insurance which, in the main, would pay benefits to himself, his family and his friends. He would thus have both the requisite knowledge and the incentive to insist on high quality performance by his insurance company. A victim would, in most cases, be claiming against his own insurance company or the insurer of another member of his family, and experience with all lines of insurance informs our judgment that insurers are more attentive to the needs of their own insureds and their families than they are to the needs of adversary strangers.²¹⁰

Courts and Other Related Institutions

We concluded earlier that a good accident reparations system should not only work well itself but should help other important social institutions work well and certainly should not interfere with them.²¹¹

The institutions most affected are the courts, the bar, the insurance business, the health professions, employee benefit plans and traffic safety agencies.

210. See pp. 73-74, 97-98 and note 68 *supra*.

"Certainly the emphasis on first-party relationships between insurer and insured should make the seller more responsive to the demands of the buyer with whom he has a continuing contractual agreement."

Warne, *supra* note 62, at 498. It is estimated that 79% of the people injured in automobiles are either the owner or a relative of the owner of the automobile in which they are injured. See note 161 *supra*.

211. See pp. 74-77 *supra*.

We noted earlier that the fault insurance system so overloads the judiciary with automobile accident cases as to jeopardize the ability of the courts to function in areas of seemingly greater public importance that are within their unique competence.²¹²

The new plan proposed in this Report should remove from court dockets the vast majority of the automobile negligence cases which now clog them. It would reserve for courts and lawyers the really intractable disputes and novel questions. It would at last release the courts and the bar from their bondage to the automobile, and give them a chance to carry on in a mass society their traditional and unique role of upholding even-handed law and individual rights.

Although the immediate financial impact of the proposed change on some insurance businesses and legal practitioners would be adverse, the legal profession and the insurance business should, on the whole and in the long run, be better off as participants in an accident reparations system that was working for the benefit of victims, consumers and society as a whole, and that was respected for doing so.

The health professions should be able to do their work better under our proposal, because it emphasizes physical rehabilitation, because it contemplates prompt and reliable payment of medical expenses, and because it would largely free doctors from testifying in court and otherwise helping to resolve disputes within the reparations system.

Employee benefit plans, under our proposal, should be able to realize for participating employees immediate savings in automobile insurance premiums.²¹³ Moreover, the plans, and the enlightened labor-management relations of which they are a part, should be able to be even more effective with an

212. See pp. 74-76 *supra*.

213. See pp. 76, 89-90 *supra*.

automobile insurance system, like our proposal, that facilitated integration of benefits.

Agencies concerned with highway safety should find support in the incentives in our proposal for safe vehicle design and in its ability to yield traffic accident data — the essential raw material for systematic approaches to highway safety — undistorted by the pressures of the reparations system.

Private Enterprise

We concluded that, for sound reasons of theory and decentralization of power, it was preferable that the automobile insurance system be operated by private enterprise rather than by government.²¹⁴

Both the fault insurance system and our proposal would fully meet that criterion. The prospects for the fault insurance system to resist fundamental change and still to remain in the private sector are discussed in the final section of this Report.

Conclusion

Except for operating through private enterprise and protecting the careless driver against catastrophic loss, the fault insurance system measures up against none of the criteria well and against most of them terribly.

Except for one aspect of internalization of costs, the proposal made in this Report meets all of the criteria well.

But the real question is how the fault insurance system and the proposal compare with each other. For victims, consumers and citizens generally, it is hard to imagine an easier choice.

214. See pp. 77-78 *supra*.

THE PROSPECTS FOR REFORM

Much is written these days about the failure, assuming the intention, of modern institutions to let the individual participate meaningfully in the decisions that order his life. The literature prepares us to expect little of great institutions in the way of spontaneous regeneration, reorientation or reform. It can only hint at the intransigence we may expect of the institution of interlocking powers which we call the fault insurance system.

But if that system is as far askew from the public interest as our study has convinced us; if that system is indeed being operated more for the benefit of its operators than for the benefit of victims, consumers and society; and if the public once really comprehends what is going on²¹⁵ — then even the enmeshed interests of those who operate the fault insurance system will not be able to forestall change.

By change we mean a departure from the fault insurance system at least as radical as what we propose. We do not

215. A number of individuals and organizations interested in either preserving or changing the fault insurance system have conducted public opinion polls of attitudes toward various aspects of the present system and toward some of the reform proposals. The results of these polls vary widely. See, e.g., AWARENESS OF AND ATTITUDE TOWARD A NEW KIND OF AUTOMOBILE INSURANCE — RESEARCH FINDINGS PREPARED FOR THE INSURANCE INFORMATION INSTITUTE ON BEHALF OF THE AMERICAN INSURANCE ASSOCIATION (ORC Caravan Surveys, Inc., Nov. 1968) (public favors no-fault insurance system); J. O'CONNELL & W. WILSON, CAR INSURANCE AND CONSUMER DESIRES (public favors no-fault insurance system); Testimony of Thomas C. Morrill, *supra* note 40, at Tables 17, 18, Exhibit A (State Farm Mut. Auto. Ins. Co. survey) (public favors retention of present system); *What the Public Thinks About Auto Insurance*, J. AMER. INS., Nov.-Dec. 1969, at 6-9 (public favors retention of present system). The wide disparity in results may not be simply due to the possible biases of the designers of the polls. They may also be due to variations in the degree of understanding of the fault insurance system and the alternatives which the different groups of interviewees had before they gave their opinions. Meaningful public opinion about the fault insurance system, and about whether and how to change it, can best be formed after the public really understands (a) what is going on under the present system, (b) what alternatives are available, and (c) what the alternatives would do. We hope that this Report will help in the development of that kind of informed public opinion.

mean palliatives. We do not mean strong talk in the place of action. We do not, in other words, mean comparative negligence, small claim arbitration, political alarms, compulsory insurance, advance payments, proliferating studies, overlaid first-party benefits or more judges.

However desirable the palliatives might be if the present system were only slightly out of alignment, and however sincere their proponents, they do not come to grips with the fundamental unsoundness of the fault insurance system. Hence they will not work. They will come to be dismissed as stalling tactics. They will be derided for inflating premiums and the revenues of lawyers and insurers, without giving equal value to victims and consumers.

The alternative to prompt and fundamental change is hardly apt to be a vindicated status quo. If fundamental change in the fault insurance system does not come very soon, we predict that the entire apparatus will be swept away and replaced by a social insurance system run by government.²¹⁶ Such a system could be created by either federal or state law and could be administered well by either federal or state government. Such a system could be financed by a levy on motoring, such as automobile registration fees or gasoline taxes, or out of general revenues. Such a social insurance system would admirably meet nearly all of the criteria for a good system. But we believe it is far preferable that the reparations system be operated by competitive private enterprise, and believe that the public interest in automobile accident reparations can be made secure within that framework.

216. Right until it happens, many people regard the displacement of private business by government as unthinkable. Yet displacement has a considerable history in insurance — e.g., The State Insurance Fund for workmen's compensation insurance, The Social Security Administration for old age and disability insurance, crop insurance, and Medicare. In automobile insurance, it is ominous that Puerto Rico and Saskatchewan, two jurisdictions that share our tradition of a private enterprise economy, have concluded that reform of their automobile accident reparations systems required that the government operate much of the system (see note 173 *supra*).

To offer the public any realistic hope of improvement, we have found it necessary to recommend fundamental change in the fault insurance system. We do not wish to minimize the gravity of the step we recommend, or the difficulty and sacrifice which would be involved in taking it. And yet our recommendations are quite moderate against the alternatives the future is likely to offer.

The question now up for decision is whether, in an important area of life, social justice can be achieved within a system of competitive free enterprise. We think it can be. We do not think it is certain to be. A lot depends on how quickly and how boldly we are willing to move while choices are still open.

What it all comes down to is this: Fundamental change is necessary. Fundamental change is inevitable. Who should take the initiative and how quickly?

The changes proposed in this Report could be enacted by any state or by the federal government. On its record of humanity and fairness, vision and courage, the government of New York State would seem as well qualified as any other to do the job, to do it right, and to do it first.

APPENDIX A

ESTIMATED INDIVIDUAL PREMIUM RATES

The comparison of the relative costs of the present automobile liability insurance system and our proposed compensation plan, described in this Report, was derived from an analytic study of the average New York policyholder's potential losses under the two systems. The methodology of this study, and average premium levels, are described in Appendix B. In this Appendix we describe how actual premium rates for certain categories of policyholder might vary under our proposal because of varying characteristics, such as annual wage, family size, or collateral sources of income and medical reimbursement.

We recognize that a variety of classification systems exists in automobile insurance today and that the introduction of additional rating variables under our proposal will multiply the possibilities for new class plans. Some insurers might choose to emphasize more strongly than we, certain components—*e.g.*, family wage income—of a policyholder's total loss potential under our proposal. Additionally, administrative and other expenses, which may vary considerably among insurance companies, are often reflected in the premium rates charged policyholders. Then, too, premium cost data for individual policyholders cannot be as statistically reliable as the overall aggregate comparisons shown in Appendix B. We thus do not maintain that the proposed premium rates shown in Table I below would necessarily be those charged under our proposal; we do suggest that among the many possible rates and rating systems available to insurers the rates shown constitute one set of reasonable choices.

For illustrative purposes, we have chosen four different policyholders and have compared their current rates under the present liability system with their estimated premium rates under our proposal, for statutory and for statutory plus certain optional coverages in 13 representative rating territories in New York. Current rates are the advisory rates of the Insurance Rating Board effective on December 15, 1969. To facilitate this comparison, we have assumed that each of the four policyholders:

- a) owns a standard size car (*e.g.*, Ford, Plymouth or Chevrolet) which is three years old;
- b) drives primarily for pleasure (or, if he does not live in a large city, drives less than 10 miles each way to and from work); and

- c) has more than three years of driving experience and has had no accident or major traffic violation for the past three years (and is subject to a merit rating system comparable to the present one).

We have also assumed that each of the four policyholders would purchase the same statutory or statutory plus optional coverages, as described below:

a) Statutory Coverages

- 1) *Present.* \$10,000/\$20,000/\$5,000 Bodily Injury and Property Damage Liability Plus Uninsured Motorist.
- 2) *Proposed.* Full Personal Injury Plus Residual Bodily Injury and Property Damage Liability to \$10,000/\$20,000/\$5,000 for Out-of-State and Death Cases Plus Non-Auto Property Damage.

b) Statutory Plus Optional Coverages

- 1) *Present.* \$25,000/\$50,000/\$5,000 Bodily Injury and Property Damage Liability Plus Uninsured Motorist Plus \$1,000 Medical Payments Plus \$50 Deductible Collision.
- 2) *Proposed.* Full Personal Injury Plus Residual Bodily Injury and Property Damage Liability to \$25,000/\$50,000/\$5,000 for Out-of-State and Death Cases (and including \$1,000 for Out-of-State Medical Payments) Plus Non-Auto Property Damage Plus \$50 Deductible Collision.

The four policyholders would also have the following individual characteristics:

Policyholder 1: Retired couple (husband and wife) with no children in household; medium medical collaterals (Medicare Parts A and B); no wage income and thus no wage income collaterals.

Policyholder 2: Husband, wife and three children with no male driver under age 25; medium medical collaterals (Blue Cross and Blue Shield or Major Medical Insurance); medium income (husband earning \$7,500 per year, wife not working); medium income collaterals (some benefits beyond those provided under the Disability Benefits Law).

Policyholder 3: Same as Policyholder 2, except that one child is a male driver under age 25 with no wage income.

Policyholder 4: Husband, wife and two children with no male driver under age 25; high medical collaterals (Blue Cross and Blue Shield and Major Medical Insurance); high income (husband earning \$12,500 per year, wife earning \$5,500 per year); medium income collaterals (some benefits beyond those provided under the Disability Benefits Law).

Table

COMPARISON OF ESTIMATED ANNUAL PREMIUM RATES
BY SELECTED RATING TERRITORIES
AND POLICYHOLDERS

	Description	Policyholder 1	Policyholder 2	Policyholder 3	Policyholder 4
Coverage and Territory	Family Size	Two-Retired	Five	Five	Four
	Young Male Driver	None	None	One	None
	Medical Collaterals	Medium	Medium	Medium	High
	Wage Income Collaterals	None	\$7,500	\$7,500	\$12,500 + \$5,500
	Wage Income Collaterals	None	Medium	Medium	Medium

Albany¹*Statutory*

Present	\$122	\$122	\$258	\$122
Proposed	41	52	97	56

Statutory + Optional

Present	229	229	441	229
Proposed	142	154	283	158

Binghamton²*Statutory*

Present	84	84	170	84
Proposed	27	35	62	37

Statutory + Optional

Present	163	163	304	163
Proposed	102	110	198	113

1. Comprises city of Albany and the following cities and towns in Albany County: Bethlehem, Cohoes, Colonie, Green Island, Guilderland, New Scotland and Watervliet.

2. Comprises city of Binghamton and the following towns in Broome County: Binghamton, Chenango, Conklin, Dickinson, Fenton, Kirkwood, Union and Vestal.

	Description	Policyholder 1	Policyholder 2	Policyholder 3	Policyholder 4
Coverage and Territory	Family Size	Two-Retired	Five	Five	Four
	Young Male Driver	None	None	One	None
	Medical Collaterals	Medium	Medium	Medium	High
	Wage Income	None	\$7,500	\$7,500	\$12,500 + \$5,500
	Wage Income Collaterals	None	Medium	Medium	Medium

Brooklyn³*Statutory*

Present	186	186	342	186
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Proposed	67	88	140	95
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Statutory + Optional

Present	373	373	658	373
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Proposed	230	251	424	258
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Buffalo⁴*Statutory*

Present	126	126	267	126
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Proposed	44	56	104	61
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Statutory + Optional

Present	216	216	423	216
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Proposed	127	140	259	144
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Chautauqua⁵*Statutory*

Present	79	79	166	79
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Proposed	25	32	59	35
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Statutory + Optional

Present	181	181	339	181
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Proposed	119	127	229	129
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Chenango⁶*Statutory*

Present	71	71	142	71
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Proposed	23	29	50	31
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Statutory + Optional

Present	173	173	311	173
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Proposed	115	121	214	123
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3. Entire borough.

4. Comprises cities of Buffalo and Lackawanna.

5. Entire county.

6. Comprises entire counties of Chenango, Cortland, Schuyler, Tioga and Tompkins and portions of the following counties: Chemung, Madison and Oneida.

ESTIMATED INDIVIDUAL PREMIUM RATES

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Coverage and Territory	Description	Policyholder 1	Policyholder 2	Policyholder 3	Policyholder 4
	Family Size	Two-Retired	Five	Five	Four
	Young Male Driver	None	None	One	None
	Medical Collaterals	Medium	Medium	Medium	High
	Wage Income	None	\$7,500	\$7,500	\$12,500 +
	Wage Income Collaterals	None	Medium	Medium	\$5,500 Medium

Hempstead⁷*Statutory*

Present	\$117	\$117	\$235	\$117
Proposed	39	51	89	55

Statutory + Optional

Present	260	260	477	260
Proposed	169	180	319	184

**Northern
Counties⁸***Statutory*

Present	73	73	146	73
Proposed	24	31	53	33

Statutory + Optional

Present	175	175	317	175
Proposed	115	122	215	124

Manhattan⁹*Statutory*

Present	179	179	330	179
Proposed	64	84	134	90

Statutory + Optional

Present	386	386	680	386
Proposed	245	264	447	271

**Monticello —
Liberty¹⁰***Statutory*

Present	141	141	275	141
Proposed	51	66	112	71

7. Comprises town of Hempstead and city of Long Beach in Nassau County.

8. Comprises entire counties of Clinton, Essex, Franklin, Hamilton, Lewis and St. Lawrence and portions of the following counties: Fulton, Herkimer, Oneida, Oswego, Warren and Washington.

9. Entire borough.

10. Comprises the towns of Liberty and Thompson in Sullivan County.

APPENDIX A

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Coverage and Territory	Description			Policyholder 1	Policyholder 2	Policyholder 3	Policyholder 4
	Family Young Medical Wage Wage	Size Male Income Income	Driver Collaterals Collaterals	Two-Retired None Medium None	Five None Medium \$7,500 Medium	Five One Medium \$7,500 Medium	Four None High \$12,500 + \$5,500 Medium

Statutory + Optional

Present	255	255	468	255
Proposed	150	166	289	171

**Mt. Vernon &
Yonkers¹¹****Statutory**

Present	109	109	221	109
Proposed	36	47	82	50

Statutory + Optional

Present	240	240	443	240
Proposed	156	167	297	170

Queens¹²**Statutory**

Present	136	136	274	136
Proposed	47	61	107	66

Statutory + Optional

Present	298	298	549	298
Proposed	191	205	362	210

Syracuse¹³**Statutory**

Present	104	104	220	104
Proposed	34	44	81	47

Statutory + Optional

Present	190	190	366	190
Proposed	117	127	235	130

11. Comprises cities of Mount Vernon and Yonkers in Westchester County.

12. Entire borough.

13. Comprises city of Syracuse and the following towns in Onondaga County: Camillus, Cicero, Clay, DeWitt, Geddes, Manlius, Onondaga and Salina.

APPENDIX B

DEVELOPMENT OF COST AND PREMIUM ESTIMATES

This Appendix summarizes the general methodology used in developing cost information with respect to the current fault insurance system and comparison of such data with estimated costs under the proposal made in this Report. A more complete description of the actuarial techniques used and copies of relevant data are available at the Insurance Department.

In developing our estimates, we have not relied on any single source of data, but have analyzed available published, and some unpublished, data, which were then cross-checked and subjected to actuarial analysis. While it is, of course, impossible to estimate the premiums to be required in the future by a new insurance proposal with complete precision—just as it is impossible to determine with complete precision the dollar cost of any new program—it is the considered opinion of the Department's actuaries that the cost estimates that have been made in connection with the present proposal are complete, technically sound and, as far as possible, developed directly from actual New York, as distinguished from national, automobile accident cost data.

A primary source of accident cost figures was the raw data developed in a 1968 survey of closed claim records of 11,000 bodily injury accidents and 16,000 property damage and collision claims, which were used in the A.I.A. REPORT *supra* note 25. At our request, Mr. Jeffrey Lange, who as a consulting actuary had participated in the study, furnished special computer runs of raw accident cost data in the New York State portion of the 1968 survey.

These data were analyzed by Department actuaries in light of the varying actuarial methodologies used in the sources cited in note 59 *supra*, and were further modified by actuarial judgment in order to give reliable and conservative results. We recognize that new programs often may involve costs which exceed one's best estimates. Thus, where the raw data admitted of several reasonable interpretations, the Department actuaries generally chose the one which tended to understate the cost savings under our proposal. One example may be helpful. Although under our proposal net economic losses of pedestrians injured in multi-car accidents would probably be apportioned equally among the vehicles involved, we have assumed conservatively that all of such costs would be borne by the policyholder whose premium rates we are evaluating.

In developing premium rates under the proposed plan, the actuarial analysis began with the known costs of the present automobile liability insurance system. Measurement was made of the medical costs, income loss and other economic losses which would be reimbursed under the proposed plan, including appropriate allowance for the economic losses of those automobile accident victims who today receive no payments under the fault insurance system.

Next, these cost estimates were adjusted to the specific features of the proposed plan, including the use of medical and loss of income collateral sources as offsets against economic losses, the adjustment of income to reflect federal, state and local income taxes, the strict liability of commercial vehicles and the continued costs of residual out-of-state and death claims which would be expected to remain under a liability system. We have not, however, included additional savings in private passenger premium rates on account of the strict liability of taxicabs or of categories of obnoxious drivers such as drunks. Similarly, we have not calculated with precision the effect on commercial and taxicab rates of their strict liability to private passenger cars, but lower costs under our proposal for the basic coverage should offset the added costs of this strict liability so that commercial and taxicab rates should remain substantially unchanged from present levels.

We have projected that loss adjustment expense costs will be substantially reduced under the proposed program, due to its simpler tests of entitlement to benefits and amount of awards. For personal injury claims, the loss adjustment expense should ultimately be somewhat less than for workmen's compensation insurance or automobile medical payments insurance, although it would probably not get quite as low as in accident and health insurance. Loss adjustment expense for damage to property should approximate the loss adjustment expense of collision insurance.

We have also assumed that administration and production costs under our proposal will be the same as under the present liability system and that traditional actuarial ratemaking procedures would continue to apply. Thus, no adjustment has been made in these estimates for possible differences between New York State and countrywide transaction costs, other than loss adjustment expenses. Nevertheless, the Department believes that the stability and simplicity inherent in our proposal would in the long run lead to operating economies by insurance companies which would further reduce premiums in New York.

Tables I, II, and III, below, summarize the estimates of average savings which have been projected under our proposal. These estimates of New York premium savings are based on statewide average advisory rates of the Insurance Rating Board, rates which are currently adequate for New York. It should be emphasized that the average premium rates developed here and in Appendix A are intended only to illustrate what one could reasonably anticipate and are not necessarily those which would be followed by any particular insurance company.

Table I

SUMMARY OF ESTIMATED NEW YORK PRIVATE PASSENGER PREMIUM SAVINGS UNDER PROPOSED PLAN
BASED ON AVERAGE BUREAU RATES, EFFECTIVE DECEMBER 15, 1969

I. Personal Injury — Statutory Coverages

A. *Present:* 10/20 Bodily Injury Liability Plus Uninsured Motorist Coverages
 $\$87.50 + \$3.00 = \$90.50$

B. *Proposed:* Full Personal Injury Plus Residual Liability to 10/20 for Out-of-State and Death Cases
 $\$90.50 \times .583^* = \52.76

C. *Premium Savings:* (I.A.-I.B.) \div I.A. = 42%

II. Personal Injury — Statutory Plus Optional Coverages

A. *Present:* I.A. Plus \$1,000 Medical Payments Plus Bodily Injury Liability Increased Limits to 25/50
 $\$90.50 + \$13.00 + (\$87.50 \times .16) = \117.50

B. *Proposed:* I.B. Plus \$1,000 Out-of-State Medical Payments Plus Residual Liability Increased Limits to 25/50 for Out-of-State and Death Cases
 $\$52.76 + (\$13.00 \times .063) + (\$87.50 \times .16 \times .15) = \55.68

C. *Premium Savings:* (II.A.-II.B.) \div II.A. = 53%

* For derivation, see Appendix B, Table II.

Table I (continued)

III. Damage to Property — Statutory Coverages

- A. *Present*: \$5,000 Property Damage Liability — \$40.91
- B. *Proposed*: Non-Auto Property Damage Plus \$5,000 Residual
Property Damage Liability for Out-of-State Cases
 $\$40.91 \times .130 = \5.32
- C. *Premium Savings*: $(\text{III.A.}-\text{III.B.}) \div \text{III.A.} = 87\%$

IV. Damage to Property — Statutory Plus Optional Coverages

- A. *Present*: III.A. Plus Collision at Average of \$50 and \$100
Deductible
 $\$40.91 + \$91.53 = \$132.44$
- B. *Proposed*: III.B. Plus Collision at Average Deductible
 $\$5.32 + (\$91.53 \times 1.1576) = \$111.28$
- C. *Premium Savings*: $(\text{IV.A.}-\text{IV.B.}) \div \text{IV.A.} = 16\%$

V. Personal Injury and Damage to Property Combined — Statutory Coverages

- A. *Present*: I.A. + III.A.
 $\$90.50 + \$40.91 = \$131.41$
- B. *Proposed*: I.B. + III.B.
 $\$52.76 + \$5.32 = \$58.08$
- C. *Premium Savings*: $(\text{V.A.}-\text{V.B.}) \div \text{V.A.} = 56\%$

VI. Personal Injury and Damage to Property Combined — Statutory Plus Optional Coverages

- A. *Present*: II.A. + IV.A.
 $\$117.50 + \$132.44 = \$249.94$
- B. *Proposed*: II.B. + IV.B.
 $\$55.68 + \$111.28 = \$166.96$
- C. *Premium Savings*: $(\text{VI.A.}-\text{VI.B.}) \div \text{VI.A.} = 33\%$

Table I (concluded)

VII. Personal Injury — Unlimited Benefits Under Statutory Coverages

- A. *Present*: Unlimited (300/300) Bodily Injury Liability Plus
Uninsured Motorist Coverages
 $(\$87.50 \times 1.40) + \$3.00 = \$125.50$
- B. *Proposed*: I.B. Plus Unlimited Residual Liability (300/300)
 $\$52.76 + (\$87.50 \times .40 \times .15) = \58.01
- C. *Premium Savings*: $(\text{VII.A.} - \text{VII.B.}) \div \text{VII.A.} = 54\%$

Table II

ESTIMATED PERSONAL INJURY COSTS

1. Present System Pure Losses	100.0% *
2. Loss Adjustment	+ 19.0
3. Total Losses and Loss Adjustment	119.0%
4. Proposed System Pure Losses	62.7% *
5. Loss Adjustment ((line 4) \times 10.7%)	+ 6.7 **
6. Total Losses and Loss Adjustment	69.4%

Assuming Equal Overhead and Administration Expenses for the Two Systems:

7. Ratio Proposed to Present System ((line 6) \div (line 3))	.583
8. Premium Savings (1.000 — (line 7), rounded, as %)	42%

* For derivations, see Appendix B, Table III.

** See Appendix B, Table III, from which Loss Adjustment may be calculated as 5% of line 9 plus 19% of lines 15 and 16.

Table III

SUMMARY OF ESTIMATED PERSONAL INJURY LOSS COSTS
UNDER PROPOSED PLAN AS A PERCENT OF
CURRENT BODILY INJURY LIABILITY INSURANCE COSTS

	<i>Percent of Present System's Loss Costs</i>
<i>Loss Costs Under Present System</i>	
1. Bodily Injury Liability (10/20 Limits)	98.3%
2. Uninsured Motorists	1.7
	<hr/>
3. Total	100.0%
	<hr/> <hr/>
<i>Loss Costs Under Proposed System</i>	
4. Medical Expense	37.7%
5. Income Loss	26.8
6. Other Expense	5.6
7. Additional Cost of Long-Term Cases	3.2
8. Deferred Benefit to Disabled Children	3.9
	<hr/>
9. Total Economic Loss	77.2%
<i>Reductions</i>	
10. Offset for Medical Collateral Sources	—13.3
11. Offset for Income Collateral Sources	— 6.5
12. Average Income Tax Offset	— 3.7
13. No Out-of-State No-Fault Benefits	— 2.7
14. Liability of Commercial Vehicles	— 3.3
<i>Additions</i>	
15. Out-of-State Liability to 10/20	+ 6.3
16. Death Cases Liability to 10/20	+ 8.7
	<hr/>
17. Total Loss Costs Under Proposed System	62.7%
	<hr/> <hr/>

APPENDIX C

LEGAL QUESTIONS

The two principal questions of law concerning the plan proposed in this Report are (1) how it conforms with relevant provisions of the constitutions of the United States and the State of New York, and (2) how to translate the recommendations in the Report into implementing legislation.

Conformity with Relevant Constitutional Provisions

The two main constitutional questions which are most often thought to arise under automobile insurance reforms are caused by provisions in particular proposals which (i) abrogate the common law right of action for wrongful death, or (ii) eliminate jury trials for whatever justiciable issues remain under the proposal. *See, e.g.,* KEETON & O'CONNELL, BASIC PROTECTION, *supra* note 29, Ch. 9. Neither of these questions arises under our proposal, since the action for wrongful death is preserved (*see* note 139 *supra*) and jury trial is retained for all justiciable issues (*see* note 165 *supra*).

Three aspects of our proposal which might possibly be thought to raise constitutional questions under a combination of equal protection (U.S. CONST. amend. XIV, §1; N.Y. CONST. art. I, §11), due process (U.S. CONST. amend. XIV, §1; N.Y. CONST. art. I, §6), or jury trial (N.Y. CONST. art. I, §2) guarantees are (1) the abolition of the tort action for negligence, (2) the imposition of strict liability on certain categories of motorists and (3) compulsory insurance coverage (first and third party). Actually, these are not serious constitutional issues in any legal sense, but just escalations of arguments over whether the proposal is a good idea or not. There was a time in American legal history when just about every new idea was challenged in the courts as contrary to due process or equal protection. More recent decisions have made it clear that due process and equal protection do not require perpetuation of the status quo or economic privilege, but rather require that classifications be reasonable and the legislation itself bear some perceivable relationship to a legitimate public object. This modernization of due process and equal protection concepts seems to have occurred even earlier with respect to legislation on insurance and civil liability matters than on social legislation generally. *See, e.g.,* St. Louis & San Francisco Ry. v. Mathews, 165 U.S. 1 (1897); New York Central R.R. v. White,

243 U.S. 188 (1917); *Nebbia v. New York*, 291 U.S. 502 (1934); *Noyes v. Erie & Wyoming Farmers Co-op.*, 281 N.Y. 187, 22 N.E. 2d 334 (1939). The *New York Central R.R.* case cited above decisively laid to rest the due process questions raised in the atypical decision in *Ives v. South Buffalo Ry.*, 201 N.Y. 271, 94 N.E. 431 (1911), which had stricken down an early New York workmen's compensation statute.

Beyond the fact that the three aspects of our proposal would certainly meet these constitutional standards of equal protection, due process and jury trial, the elimination of common law tort actions, the imposition of strict liabilities and compulsory insurance protection are all amply justified by legislative and judicial precedents in this State.

First, as to abolishing or restricting the common law tort of negligence, the idea that the various constitutional guarantees somehow "freeze in" common law torts is rebutted by numerous statutes and decisions. *See, e.g.*, Laws of N.Y. 1964, ch. 937, Laws of N.Y. 1965, ch. 981, N.Y. EDUC. LAW §§6513(10), 6910(5) (McKinney Supp. 1969) ("Good Samaritan" statutes barring common law negligence action against doctor or nurse for negligence in emergency treatment); Laws of N.Y. 1956, ch. 842, N.Y. GEN. OBLIG. LAW §9-103 (McKinney 1964) (abolishing common law nuisance or negligence actions of a person unexpectedly injured while hunting on another's land); Laws of N.Y. 1935, ch. 263, N.Y. CIVIL RIGHTS LAW §80-a (McKinney Supp. 1969) (abolishing common law right of action for alienation of affections, etc.); N.Y. CIVIL PRACTICE LAW & RULES, ARTICLE II (McKinney 1963) (recodifying and revising statutes of limitations on various common law actions), and the legislative history contained therein; *Silver v. Silver*, 280 U.S. 117 (1929) (upholding the constitutionality of state "guest statutes" which limit fault law recovery by certain automobile accident victims).

Second, the imposition of strict liabilities is a common occurrence. They have long been known by the common law, *e.g.*, for damage done by wild animals, *Stamp v. Eighty-Sixth St. Amusement Co.*, 95 Misc. 599, 159 N.Y.S. 683 (App. T. 1916) (lion); for damage caused by hazardous activities, *Rylands v. Fletcher*, L. R. 3 H. L. 330 (1868) (private reservoir), *Hay v. Cohoes*, 2 N.Y. 159 (1849) (blasting), *Spano v. Perini Corp.*, 25 N.Y. 2d 527, 302 N.Y.S. 2d 527, 205 N.E. 2d 31 (1969) (blasting); and for damage done by employees for which the employer is held responsible, *Mott v. Consumers' Ice Co.*, 73 N.Y. 543 (1878). *See also* 2 F. HARPER & F. JAMES, *supra* note 8, Ch. XIV. Early and recent statutes also have imposed strict liabilities, such

as by statutory torts not requiring intent, fault or knowledge, *e.g.*, *St. Louis & San Francisco Ry. v. Mathews*, cited above (fire damage resulting from railroad operation); Laws of N.Y. 1921, ch. 157, N.Y. GEN. OBLIG. LAW §11-101 (McKinney 1964) (third-party injury resulting from illegal sale of alcoholic beverages); Laws of N.Y. 1965, ch. 1031, N.Y. GEN. MUNICIPAL LAW §71-a (McKinney Supp. 1969) (municipality to compensate persons injured in obeying order to aid peace officers). Judicial decisions continue to impose new strict liabilities, *e.g.*, *Goldberg v. Kollsman Instruments Corp.*, 12 N.Y. 2d 432, 240 N.Y.S. 2d 592, 191 N.E. 2d 81 (1963) (airline and airplane manufacturer liable to injured passenger). Indeed, in automobile accident law itself, the vehicle owner is made liable for damage done by his vehicle when negligently driven by someone else, without regard to the owner's personal fault or degree of care, N.Y. VEHIC. & TRAFFIC LAW §388 (McKinney 1960).

Finally, statutes which compel a protected class of persons to buy insurance or otherwise to contribute toward the cost of their protection, or which require persons to purchase liability insurance, are now commonplace, *see, e.g.*, 42 U.S.C. §401 (1969) (creating the Federal Old-Age and Survivors Insurance Trust Fund and mandating employee contributions thereto — constitutionality upheld in *Helvering v. Davis*, 301 U.S. 619 (1937)); N.Y. WORK. COMP. LAW §209 (McKinney 1965) (employee contributions required under New York's Disability Benefits Law); N.Y. VEHIC. & TRAFFIC LAW §§310-321 (McKinney 1960) (compulsory automobile liability insurance).

Accordingly, the proposed plan complies with the two directly relevant constitutional requirements — preservation of the action for wrongful death and preservation of jury trial for all justiciable issues — and we may safely conclude that, under both general principles and specific precedents, it fully satisfies the other constitutional standards that are even arguably relevant to automobile accident reparations.

An Approach to Bill Drafting

To translate the recommendations in the Report into implementing legislation, we would suggest the following approach to bill drafting.

The approach would characterize the system in legal terms as a strict liability system rather than as a system of contract benefits for first- and third-party beneficiaries. While this distinction should make no difference in how the system works (*see note 134 supra*), the selection of strict liability for legislative drafting purposes makes it possible

to integrate the proposed plan into the remainder of the State's statutory framework without extensive amendments to other laws.

Automobile insurance would continue to be "liability" insurance, which means that the general provisions of the Vehicle and Traffic Law and the Insurance Law dealing with the conduct of the automobile insurance business would continue to be applicable to insurance under the plan. The compulsory insurance law and provisions establishing the New York Automobile Insurance Plan and the Motor Vehicle Accident Indemnification Corporation would continue in effect with the principal necessary change being to eliminate the \$10,000/\$20,000/\$5,000 limits in those laws for the insurance under the plan.

The suggested drafting approach could either (i) characterize all legal relationships as strict liabilities, or (ii) so characterize all relationships except where the vehicle owner was the claimant. The second alternative would be closer to our everyday view that a person's (*i.e.*, the vehicle owner's) claim on his own insurance is a first-party (not a strict liability) claim. The first alternative, which we have used in the outline in this Appendix, makes for a simpler bill and one that fits more easily into the existing statutory framework. In a well-drafted bill, it should make no practical difference which alternative is selected.

The suggested approach does not contemplate an attempt to provide specifically in the statute for every conceivable situation which could arise. The bill would set forth the plan in terms sufficiently precise to make it clear what the result would be in the overwhelming preponderance of cases. It would also make the essential purposes of the statute clear, to serve as guides to resolving the few fringe situations which are bound to remain. These fringe situations would be resolved in two ways.

First, insurance policy forms would define with precision (*e.g.*, by reference to specific existing benefit programs such as Blue Cross and the Disability Benefits Law) the items to be included and excluded in order fully to compensate all net economic loss. These policy forms would be subject to review and approval by the Insurance Department for consistency with legislative intent, and self-insurance plans would be required to conform to the minimum standards for insurance policies.

Second, the approach we suggest would leave to the courts the resolution of certain kinds of problems which may occur around the edges of the proposal — *e.g.*, whether or not particular losses arose out of the use of a motor vehicle. In the context of a plan which will handle the vast majority of the claims with clarity and speed, judicial determination of the few really difficult cases is both possible and appropriate.

The foregoing approach to bill drafting leads to a relatively short and simple bill, a preliminary outline of which is set out below.

The simplicity of the outline of the implementing legislation reflects the simplicity of the plan we have proposed. This is not the illusory simplicity of the fault insurance system — where the rules can be stated easily enough but can hardly ever be applied without exhaustive argumentation. The economy of language does not obscure rules that are impossible to apply, but rather reflects the ease of implementation of the plan.

By including an outline of draft legislation in this Appendix we do not mean to suggest that this is the only form that the legislation could take. Nor do we suggest that the legislation in this outline form is necessarily complete. It might be desirable to provide in greater detail for certain situations; it might be desirable to provide statutory definitions for certain key words and phrases, although many if not all of them are already defined in various sections of existing law; and it might be necessary to amend certain other provisions of law to conform them to the new plan, although, as noted, that need should be minimal.

We include the outline in this Appendix both to demonstrate that the drafting problems are not particularly complex and need not delay enactment of our proposal, and to invite critical comment and inquiry in anticipation of a final legislative proposal.

The legislation might be framed to add a new article to either the Insurance Law or the Vehicle and Traffic Law, providing, in outline form, as follows:

I. Compensation for Accident Victims.

It is the purpose of this law that every person who sustains net economic loss arising out of the use of a motor vehicle in this State shall be fully compensated for such loss, subject only to the exceptions in Section II.

II. Responsibility for Accident Costs.

1. The owner of a motor vehicle shall be liable, without regard to fault, for all net economic loss as a result of personal injury or property damage arising out of the use of such motor vehicle in this State, except for such loss sustained by (a) occupants of another motor vehicle, (b) the owner of a motor vehicle by reason of damage to his motor vehicle, or (c) the operator of a motor vehicle while committing a felony or operating with the specific intent of causing injury or damage.

2. The owner of a commercial vehicle or a taxicab shall be liable, without regard to fault, to reimburse the insurer of any other kind of motor vehicle for payments made (a) pursuant to Subdivision 1 or (b) on account of net economic loss as a result of property damage to any other kind of motor vehicle, where payments under (a) or (b) arise out of the use of such commercial vehicle or taxicab in this State.

3. The operator of any motor vehicle shall be liable, without regard to fault, to reimburse the insurer of any motor vehicle for payments made (a) pursuant to Subdivisions 1 or 2 or (b) on account of net economic loss as a result of property damage to a motor vehicle, where such payments arise out of his operation of a motor vehicle in this State (i) while intoxicated, (ii) while under the influence of dangerous drugs, (iii) while committing a felony, or (iv) with the specific intent of causing injury or damage.

4. The term "liability" includes a person's responsibility for net economic loss as a result of personal injury to himself.

III. Insurance Required.

Proof of financial security shall be required pursuant to the Motor Vehicle Financial Security Act with respect to liabilities under Subdivisions 1 and 2 of Section II. Existence of insurance shall fully discharge these liabilities.

IV. Net Economic Loss.

1. Economic loss shall mean (a) in the case of personal injury, the sum of (i) all expenses reasonably and necessarily incurred for medical and hospital care, (ii) all expenses reasonably and necessarily incurred for physical and occupational rehabilitation, (iii) income loss, and (iv) other expenses reasonably and necessarily incurred on account of such injury; and (b) in the case of property damage, economic loss resulting from destruction of or damage to property. Net economic loss shall mean economic loss minus (a) taxes which would have been payable on such lost income, and (b) the amount of any reimbursement available from other insurance or similar sources except from general public revenues.

2. Payments for net economic loss shall be made as such loss is incurred. Amounts unpaid thirty days after just demand therefor shall thereafter bear interest at twice the rate allowed pursuant to Section 14-a of the Banking Law.

3. Insurance policy forms for the owner's liability under Subdivisions 1 and 2 of Section II shall be subject to the approval of the Insurance Department, which shall establish minimum benefit standards applicable to such policies and to self-insurers. More liberal benefits may be provided.

V. Certain Actions Abolished.

Except as provided in this law, an owner or operator shall not be liable for personal injury or property damage arising out of the use of a motor vehicle in this State.

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State of New York
Insurance Department

ACTUARIAL SUPPLEMENT
to
"AUTOMOBILE INSURANCE...FOR WHOSE BENEFIT?"

DEVELOPMENT OF ESTIMATED COST AND PREMIUM COMPARISONS
OF PRESENT AND PROPOSED
AUTOMOBILE INSURANCE SYSTEMS



1970



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GENERAL METHODOLOGY

This Actuarial Supplement to the New York State Insurance Department Report, "Automobile Insurance ... For Whose Benefit?" (hereinafter cited as NEW YORK REPORT) presents the detailed methodology used in developing cost information with respect to the current automobile insurance system and comparison of such data with estimated costs under the proposed automobile compensation system described in the NEW YORK REPORT. A simplified summary of the materials in this Supplement is in Appendix B of the NEW YORK REPORT. The exposition of cost analysis techniques, premium element computations, source citations and discussion of relevant methodological considerations in this supplement are intended for the professional actuary and presuppose a close familiarity with the NEW YORK REPORT, as well as with AMERICAN INSURANCE ASSOCIATION, REPORT OF SPECIAL COMMITTEE TO STUDY AND EVALUATE THE KEETON-O'CONNELL BASIC PROTECTION PLAN AND AUTOMOBILE ACCIDENT REPARATIONS (1968) (hereinafter cited as A.I.A. REPORT), and ACTUARIAL COMMITTEE OF THE AMERICAN MUTUAL INSURANCE ALLIANCE, ACTUARIAL REPORT ON THE ADEQUACY OF THE COSTING OF THE AMERICAN INSURANCE ASSOCIATION'S "COMPLETE PERSONAL PROTECTION AUTOMOBILE INSURANCE PLAN" (1969) (hereinafter cited as A.M.I.A. REPORT).

Over the past several years, as interest in automobile compensation systems has quickened, several actuarial studies have compared the estimated costs of such systems with costs under the present fault insurance system. The pioneering essay in the area of cost analysis of automobile compensation systems is that of Harwayne, Insurance Cost of Automobile Basic Protection Plan in Relation to Automobile Bodily Injury Liability Costs, 53 CAS. ACTUARIAL SOC'Y PROCEEDINGS 122 (1966), followed in 1968 by a more refined analysis of New York automobile compensation costs, F. HARWAYNE, AUTOMOBILE BASIC PROTECTION COSTS EVALUATED (1968). Other relevant studies considered in the development of this cost analysis are cited in the NEW YORK REPORT at note 59. In addition, preliminary data from the New York Portion of the Closed Claim Survey conducted by the U.S. Department of Transportation, cited at note 26 of the NEW YORK REPORT, were utilized for purposes of selected cross-checking. Furthermore, other independent data sources (e.g., New York State Department of Motor Vehicles, National Safety Council) were consulted in the course of this study.

The cost and premium estimates presented in the NEW YORK REPORT were derived principally from the raw data assembled in a 1968 survey of closed claim records of approximately 11,000 bodily injury accidents and 16,000

property damage and collision claim reports in seven states. (See A.I.A. REPORT, p. 13) At the Insurance Department's request, special computer runs of the raw accident cost data covering the New York State portion of this 1968 survey were furnished the Department. Of those persons in the national survey who sustained personal injuries, approximately 35 percent were New York automobile accident victims. (Hereinafter, the total sample, as used in the A.I.A. REPORT, will be described as the "national survey" - even though only the files of certain insurers in seven industrial states were actually surveyed - to distinguish it from the New York data sample.)

The cost comparison development proceeded from an analysis of the costs of the present automobile insurance system, as drawn from the 1968 New York survey data, to an item-by-item consideration of estimated costs under the proposed compensation system. Of necessity, such a cost comparison, directed as it is at the projection of costs under a new insurance system, relies upon a complex of factors, including analysis of statistical data, data interpretation and actuarial judgment. This study concludes that adoption of the Department proposal would result in substantial reductions from present premium levels, which are currently adequate for New York. Estimates, based upon reasonable assumptions, of the size of such reductions and their expression in dollar amounts are contained in this Supplement and in Appendix B of the NEW YORK REPORT.

In reviewing the available materials on the costs of automobile accidents, it has been determined that the raw data contained in the 1968 survey are the most complete, relevant and up-to-date information available at this time for New York. As noted above, this information was assembled in a closed-claim file survey of selected automobile insurance companies. There are, of course, inherent limitations in this method of data gathering and it is recognized that other methods of collecting information on automobile accident costs may produce results which are at variance with those emerging from this study. This may especially be true with respect to the long-term costs of extensive injuries, where the projection of such costs is necessarily less precise as the period of disability lengthens. The NEW YORK REPORT (pp. 27-29) indicates that such seriously injured persons are severely undercompensated for their economic losses under the current system. For this reason, the Department's proposed system allocates more of its benefit dollars for the compensation of the economic loss of these victims than does the current system. To the degree that other studies might contend that seriously injured accident victims were even more severely undercompensated under the current system, a still greater share of a compensation system's benefit dollars might have to be devoted to the compensation of such losses.

In the process of developing reasonable and reliable cost estimates, which would avoid underestimating the costs of the Department proposal, additional elements of conservative estimation are introduced at numerous points in this analysis. Wherever applied, these conservative elements have the effect of adding an extra margin of safety to the projections of cost reduction.

New York data have been compared with the national survey data to test for consistency and to note and account for New York variations. Except in one or two instances, New York results are not significantly different from national survey results.

A set of selected illustrative examples of individual premium rates is given in Appendix A of the **NEW YORK REPORT** so that automobile policyholders may better comprehend the possible effect of aggregate cost comparisons on their automobile insurance premiums. One prerequisite to the development of estimated individual premiums is the formulation of a classification plan. The approach to classification used in Appendix A is not part of the Department's proposal and is not intended to influence the development of other, perhaps quite different, approaches to classification. Precision of premium cost estimation for individual classifications and territories is (as noted in the **NEW YORK REPORT**) significantly less than the precision with respect to aggregate costs. For these reasons and to avoid inhibiting the development of different classification plans under the proposal, publication of the details of individual premium rate development are not included in this Supplement.

PERSONAL INJURY:
COSTS UNDER PRESENT AND PROPOSED SYSTEMS

I. LOSS COSTS

A. Introduction

EXHIBIT NY-1 below is a summary, in tabular form, of the estimated personal injury loss cost components of the proposed compensation system expressed as a percent of the present system's private passenger bodily injury loss costs. The EXHIBIT reproduces and expands upon the information contained in Appendix B, Table III of the NEW YORK REPORT. The derivation of each line of EXHIBIT NY-1 is explained in items 1 thru 17 in sections I.B. and I.C. below.

In the calculation of loss costs under the present and proposed systems, a summary of economic loss by type of accident is used, derived from accidents reported by insureds who had both bodily injury and medical payments coverages on their cars. Although the review of injuries under policies with medical payments coverage is intended to identify all of the potential claimants under the Department's proposed system, one might consider whether a review of policies without medical payments would produce different results. The exclusion of injured victims reported through such policies (with bodily injury liability coverage only) is actually a conservative measure, in that the exclusion tends to produce lower apparent costs under the present system and exaggerate costs under the proposed system, for the following reasons:

EXHIBIT NY-1

ESTIMATED PERSONAL INJURY LOSS COSTS
UNDER PROPOSED SYSTEM AS A PERCENT OF
CURRENT BODILY INJURY LIABILITY INSURANCE COSTS

LOSS COSTS UNDER PRESENT SYSTEM	Number of Claims	Average Amount	Total Cost	Percent of Present System's Loss Costs
1. Bodily Injury Liability (10/20 Limits)	1,438	\$ 1,082	\$1,555,916	98.3%
2. Uninsured Motorists	8	3,323	26,584	<u>1.7</u>
3. Total	1,446	\$ 1,094	\$1,582,500	<u>100.0</u>
<u>LOSS COSTS UNDER PROPOSED SYSTEM</u>				
4. Medical Expense	1,935	\$ 308	\$ 596,409	37.7%
5. Income Loss	657	646	424,242	26.8
6. Other Expense			89,033	5.6
7. Additional Cost of Long-Term Cases	2.5	20,000	50,000	3.2
8. Deferred Benefit to Disabled Children	2.0	31,250	62,500	<u>3.9</u>
9. Total Economic Loss	2,037	608	1,222,184	77.2
<u>REDUCTIONS</u>				
10. Offset for Medical Collateral Sources			- 210,532	- 13.3
11. Offset for Income Collateral Sources			- 102,667	- 6.5
12. Average Income Tax Offset			- 57,884	- 3.7
13. No Out-of-State No-Fault Benefits			- 43,406	- 2.7
14. Liability of Commercial Vehicles			- 52,490	- 3.3
<u>ADDITIONS</u>				
15. Out-of-State Liability to 10/20	92	1,082	+ 99,544	+ 6.3
16. Death Cases Liability to 10/20	21	6,555	+ 137,663	+ 8.7
17. Total Loss Costs Under Proposed System			\$ 992,412	<u>62.7%</u>

- a) Most of the assigned risk insureds are in the group with bodily injury coverage only. Assigned risk insureds (with their generally poorer than average loss experience) will more often be found "at fault" than the average insured and their inclusion would thus increase observed costs under the fault insurance system.
- b) Assigned risk insureds and others not purchasing medical payments coverage will generally have lower incomes than the population generally and would be expected to collect less under the Department proposal than the average person.
- c) The existence of medical payments coverage in an automobile liability insurance policy will often inhibit guest liability claims, which might otherwise be made, and thus have the effect of reducing apparent costs under the fault insurance system.

The general procedure followed in this study in summarizing the data is described in A.I.A. REPORT, pp. 13-14 and in A.I.A. REPORT, COST STUDY, Exhibits III and IV, with the major difference that New York data and not national survey data are used. The New York results are summarized below in EXHIBIT NY-2.

EXHIBIT NY-2

AUTOMOBILE BODILY INJURY CLAIM SURVEY-NEW YORK
ECONOMIC LOSS BY TYPE OF ACCIDENT

	ONE CAR - IN STATE					MULTI-CAR - IN STATE										OUT OF STATE					Grand Total (17)	Total Under Proposal (18)
	Total		Driv.		Ped. (5)	Total (6)	Driv. (7)	Pass. (8)	Under Other Car		Ped. (11)	Total (12)	Driv. (13)	Pass. (14)	Other (15)	Ped. (16)						
	(2)	(3)	(4)	(5)					(9)	(10)												
(1) Total No. of Inj.	62	23	26	13		494	149	133	195	16	1	36	11	10	15	0	592					
1a. NOM *	29	11	18	0		342	153	174	208	4	1	26	4	4	15	0	395					
1b. Open C *	59	20	22	17		187	395	302	791	23	16	32	9	7	16	0	532					
1c. CCBS *	276	91	158	123		2834	714	650	1400	51	19	122	31	26	63	2	1965					
1d. CCDS *	426	145	158	123		2834	714	650	1400	51	19	214	55	48	109	2	3474					
1. Total																						
Med. Loss																						
2. #	408	136	153	119		2677	94	96	93	95	93	-	86	1.00	96	1.00	95					
3. \$	445	346	394	586		245	270	197	207	686	1948	202	47	48	105	2	1816					
4. Avg	177072	47056	60882	69734		641604	181170	125258	265914	32958	35064	78953	11562	27360	40005	36	366					
5. Total																	555136					
Income Loss																						
6. #	-	23	32	23		1014	29	22	145	47	50	101	28	14	54	-	27					
7. \$	112	33	61	128		479	468	336	377	1908	4998	314	222	895	236	-	514					
8. Avg	1166	1864	3984	3486		476776	96876	46618	237510	47792	49980	32670	6216	12530	13924	-	666					
9. Total	130236	61512	33864	34860													342456					
Paid Help Exp.																						
10. #																	12					
11. Avg																	215					
12. Total																	49330					
Trans. Exp.																						
13. \$																	94					
14. Avg																	81					
15. Total																	6195					
Funeral Exp.																						
16. #																	01					
17. Avg																	1107					
18. Total																	21166					
Misc. Exp.																						
19. \$																	99					
20. Avg																	164					
21. Total																	28221					
B.I. Claims																						
22. \$	132	0	34.8	78.5		1214	1.8	21.3	87.6	87.0	43.8	92	0	8.3	92.6	100.0	-					
23. #																	1438					
U.M. Claims																						
24. \$	-	0	0	0		8	1.0	0.3	0	0	0	-	0	0	0	0	8					
25. #																						

*1a. NCM = No Claim Made
 1b. Open C = Open Claims
 1c. CCBS = Claims Closed Before Survey
 1d. CCDS = Claims Closed During Survey

The total number of injuries shown on EXHIBIT NY-2, line (1) is derived from NY TABLE A-1-CLAIMS CLOSED DURING SURVEY; NY TABLE A-3-CLAIMS CLOSED BEFORE SURVEY; NY TABLE A-4-OPEN CLAIMS; and NY TABLE A-5-NO CLAIM MADE (See APPENDIX to this Supplement).

The adjustment for underreporting of Out-Of-State claims, made for the national survey (see A.I.A. REPORT, COST STUDY, EXHIBIT III) is generally followed here. Thus, the total of 214 Out-Of-State injuries shown on EXHIBIT NY-2 is approximately 6.54 percent of total In-State injuries and is more than 150 percent greater than the actual reported number of Out-Of-State injuries in New York.

Medical Loss and Income Loss percentages and average costs in EXHIBIT NY-2 are derived from NY TABLE A-1 (see APPENDIX to this Supplement); the actual number of victims with medical and income loss is derived by applying these percentages to the total number of injuries from line (1) in EXHIBIT NY-2. Paid Help, Transportation, Funeral, and Miscellaneous Expense percentages and average costs are the same as the comparable items in A.I.A. REPORT, COST STUDY, Exhibit IV, with the total cost of each item in EXHIBIT NY-2 reflecting the application of these percentages and average cost values to the number of New York injuries. Bodily injury and uninsured motorist claim percentages are derived from NY TABLE A-1 (see APPENDIX to this Supplement); actual B.I. and U.M. claim numbers are derived from application of these percentages to the sum of the number of injured victims shown in EXHIBIT NY-2, lines (1b), (1c) and (1d).

It has been argued that the methodology utilized in the national survey results in the omission of some of those injured persons who currently receive no payment under the fault insurance system but would receive compensation under a first-party system. (See A.M.I.A. REPORT, pp. 40-61) Thus, the contention is that an upward adjustment in the number of both single-car and multi-car injuries is necessary in estimating the number of personal injury claims under the proposed system. This contention is based largely on arguments which are speculative and which are largely inapplicable in New York.

To consider one example cited in support of this contention: Assume that the insured car is struck in the rear. The A.M.I.A. REPORT maintains that the occupants of the insured car would file tort liability claims against the owner of the other car, and the occupants of the other car would also file tort liability or medical payments claims against the owner of the other car. It is alleged that under these circumstances the "insurer would be totally ignorant of any personal injuries arising out of this accident involving their insured driver". (A.M.I.A. REPORT, p. 45)

This study concludes that an upward adjustment in the number of injuries for multi-car accidents is not warranted on the basis of this contention because:

(a) The insurer would have notice of injuries by virtue of the filing of medical payments claims. Occupants of the insured car would file medical payments claims against

the owner's insurer, since (1) medical payments can be recovered without regard to anyone's fault; and (11) under New York's collateral source rule, medical payments recoveries would not affect subsequent recoveries in tort. Note also that medical payments claims are settled swiftly, and would not be subject to the protracted delays of liability claims under the fault insurance system.

(b) The insurer would have notice of injuries because of the car owner's desire to insulate himself from personal liability. New York is a state whose citizens are extremely "claima-conscious". And it is common knowledge that claims are frequently made against drivers who believe themselves totally without fault. Thus, everyone -- including someone whose car has been struck in the rear-- is aware that the injured persons in an accident may press a liability action even if there are no apparent grounds for any claim (i.e., by an occupant of the striking car against the owner of the car struck in the rear). The standard provisions of the family automobile policy spell out the insured's obligation to report the accident:

"In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable."

Fear that one's own insurer might escape liability for the insured's failure to report an accident thus acts as a powerful incentive for the insured to notify the insurer of the occurrence of any accident. Note too that the sample used in this study generally does not include assigned risk insureds (since few assigned risk insureds at the time of the survey had medical payments coverage), so that the putative "moral hazard" of failing to report an accident which some underwriters attribute to assigned risk insureds is not relevant here.

In summary, the contention made in the A.M.I.A. REPORT that the accident would be unreported implies that the insured has put himself in personal jeopardy by violating the conditions of his policy in order to avoid a reimbursement by his insurance company for valid medical expenses incurred by himself, members of his family or his guest passengers.

Another argument advanced in support of the alleged underreporting of injuries arising from multi-car accidents is that "injured persons entitled to medical payments benefits often do not file medical payments claims. Exhibit III of the A.I.A. costing study shows that there were fewer injuries reported in the A.I.A. 'insured car' than in the 'other car'". (A.M.I.A. REPORT, p. 46) For this reason, the national survey increased the number of injuries in the insured car by 21 percent so that the number of injuries in the insured car would equal the number of injuries in the "other car".

Presumably, this 21 percent adjustment would account for those persons who failed to file medical payments claims despite their entitlement. But examination of EXHIBIT NY-2 above reveals that no such 21 percent upward adjustment is necessary for the New York data sample. The New York data in EXHIBIT NY-2 above indicate that, in multi-car accidents, there are 1,364 injuries in the insured car (line (1), columns (7) + (8)) and 1,451 injuries in the "other car" (line (1), columns (9) + (10)). The latter number (when reduced for injuries in the third, fourth, fifth, etc. car in a chain accident) is not significantly different from the 1,364 injuries reported in the insured car. There is thus no observed medical payments claim underreporting in New York and no upward adjustment of the number of multi-car injuries is indicated.

With respect to the number of injuries arising out of single-car accidents, it has also been argued that the national survey approach results in nonreporting of certain injuries for the following two reasons:

- a) the injured person may not put in a medical payments or liability claim because he may have already collected from an accident and health policy or other collateral source; or
- b) a medical payments claim will not be placed because it could result in an increase in the cost of the owner's insurance premium under a merit rating plan. (See A.M.I.A. REPORT, pp. 48-50)

Since the proposed first-party system is excess of any recovery from collateral sources such as accident and health insurance and could include a merit rating plan, these reasons for nonreporting would appear to apply with equal force under the Department's proposed new system. It is, therefore, unnecessary to provide for such cases in the proposed system, since they would, by the force of these reasons, remain unreported. Nevertheless, as a margin for possible underestimation of the number of injuries in single-car accidents, an adjustment has been made below to include minor unreported accidents.

One non-insurance measure of the proportion of possible unreported injuries arising from single-car accidents is the accident reports made to motor vehicle departments. The 1967 New York Department of Motor Vehicles "Report of Motor Vehicle Accidents" indicates that the proportion of single-car injuries (inclusive of all pedestrian injuries, whether related to single-car or multi-car accidents) is approximately 29.5 percent of all injuries. New York data from EXHIBIT NY-2, line (1) above shows this same proportion as 24.6 percent:

$$\frac{\text{Columns (2) + (11)}}{\text{Columns (2) + (7) + (8) + (11)}} = 24.6\%$$

In order to increase the number of estimated single-car injuries so that the resulting proportion will be 29.5 percent of total injuries (and thus the same proportion as that indicated by Department of Motor Vehicles accident reports), the number of single-car injuries is adjusted upward by 28 percent:

$$\frac{1.28 \times .246}{1.000 + (.28 \times .246)} = 29.5\%$$

The result is that 125 injuries are added to the 1,912 already included in the New York data sample (EXHIBIT NY-2, line (1) column (18) above), for a total of 2,037 injuries.

This adjustment for possibly unreported single-car injuries is equal to 6.54 percent of the 1,912 injuries shown in EXHIBIT NY-2 above. Comparable adjustments are made below (in section I.C. - Items 4, 5 and 6) in computing the numbers of injured persons with Medical Expense, Income Loss and Other Expense.

From the foregoing discussion of the manner in which these possibly unreported single-car injuries could arise, it is clear that they are almost exclusively cases involving small expense. They are those cases where the potential medical payments recovery from an insurer is not sufficient to overcome a possible surcharge under a merit rating plan or the fear of a blemish on one's driving record. Although few of these cases would, therefore, be expected to exceed \$100 in economic loss, each of the additional cases has nevertheless

been valued in the calculations below (section I.C. - Items 4, 5 and 6) at half the expected economic loss cost (i.e., over \$300) of the reported injury average (i.e., over \$600).

An estimate of the percentage increase in the number of claimants under the proposed system is derived from the data given above. EXHIBIT NY-2, lines (23) + (25), column (17) indicates there are 1,446 compensable B.I. and U.M. claims under the present system. The adjusted estimate of number of injuries under the proposed system is given above as 2,037. The estimated claim increase is thus approximately 41 percent; or, stated in equivalent terms, the present system leaves uncompensated some 29 percent of automobile accident victims who would be compensated under the proposed system.

Finally, as a further precaution against the possible underestimation of the number of claims under the Department's proposal, three additional conservative judgments have been made:

a) Some of those "injured" persons who have been reported in "No Claim Made" (EXHIBIT NY-2, line (1a)) will not have made bodily injury liability or medical payments claims because they have suffered minimal injury without any attendant economic loss. Nevertheless, all injured persons classified under "No Claim Made" have been included in number of injuries (in costing the proposed system) at the average Medical Expense and Income Loss values reported for those injured persons who made claims.

b) All pedestrian injuries as a result of multi-car accidents have been included as compensable under the proposed system as if their total economic loss would be recovered exclusively from the insured car and never from the other car, when, in fact, there would be an apportionment of pedestrian injury costs among the two or more vehicles involved in the accident. Since pedestrian injuries are generally those of greatest severity, this conservative measure adds a significant amount to the estimated bodily injury loss costs of the proposed system.

c) It should also be noted that the methodology of the national survey included those injured pedestrians who were either the insured himself or members of the insured's family and who were injured by an automobile other than the insured automobile. Such persons are entitled under the current system to make claims under the medical payments coverage of their own automobile insurance policy; under the Department's proposed system, these injured pedestrians would recover from the insurer of the car which struck them, rather than from their own insurer. This study has conservatively valued the cost of pedestrian injuries as if all injured pedestrians (in-state) would be compensated by the insured's carrier under the proposed system.

B. Elements of Loss Costs Under Present System

Comparative analysis of costs under the present and proposed systems begins with loss costs under the present liability system.

1. Bodily Injury Liability (10/20 limits)

The number of automobile bodily injury liability claims, as derived from the New York sample, is 1,438. (See EXHIBIT NY-2, line (23), column (17), above).

The average bodily injury liability claim settlement value of \$1,082 for New York is derived from NY TABLE F-2 (see APPENDIX to this Supplement) after eliminating losses over \$10,000 (and including death cases up to \$10,000).

In reviewing this average claim settlement value it should be observed that NY TABLE F-2 corresponds to Table F-2 in the national survey (see A.I.A. REPORT, APPENDIX TO COST STUDY). Note that if the national survey's average bodily injury claim settlement value were developed from Table F-2 rather than from Table F-1, it would produce an average national survey bodily injury settlement value of \$989, rather than the \$1,025 actually derived from Table F-1 (see A.I.A. REPORT, COST STUDY, Exhibit II, Sheets 1 and 2), which is a figure nearly 4 percent higher. Use of NY TABLE F-2 in developing the New York average value thus understates bodily injury costs under the present system.

Further evidence of the conservative nature of the

New York average claim settlement value estimated is produced by comparing Table A-1 in the national survey (see A.I.A. REPORT, APPENDIX TO COST STUDY) with NY TABLE A-1 (see APPENDIX to this Supplement) where lines (31-34), column (17), may be used to obtain relative average bodily injury liability claim settlement values for the national survey and for New York. Using these tables for purposes of comparison only, a New York average of \$1,423 results, which is 14.85 percent higher than the comparable national survey average of \$1,239. If this relativity is applied to the national survey's bodily injury liability claim settlement average of \$1,025, it would produce an indicated New York average value of \$1,177, rather than the \$1,082 actually used. Thus, if either of these alternative approaches is used, a higher bodily injury liability claim settlement average results for New York, which in turn would increase the indicated cost saving under the Department's plan.

The product of the number of bodily injury liability claims and the average value per claim in the New York sample is \$1,555,916, which represents 98.3 percent of total loss costs under the present system. (See EXHIBIT NY-1, line (1)).

2. Uninsured Motorists

As shown in EXHIBIT NY-2 above, the number of uninsured motorists claims in the New York sample is 8. These claims have an average value of \$3,323 as shown in NY TABLE A-1 (see APPENDIX to this Supplement) for a total cost of \$26,584, or 1.7 percent of total loss costs under the present system. (See EXHIBIT NY-1, line (2)).

3. Total of Loss Costs Under Present System

From Items 1 and 2 above the sum of all loss costs (or 100 percent of such costs) under the present system is derived, as follows:

$$\$1,555,916 + \$26,584 = \$1,582,500$$

(See EXHIBIT NY-1, line (3)).

C. Elements of Loss Cost Under Proposed System

4. Medical Expense

From EXHIBIT NY-2, line (3), column (18) above, the number of those personal injury claims with some medical expense is 1,816. The average medical expense for those reporting medical expense from EXHIBIT NY-2, line (4), column (18), is \$306. As a safety margin, this average is increased by 4 percent, to a value of \$318. (See also A.I.A. REPORT, COST STUDY, Exhibit II, Sheet 2.)

The adjustment of 6.54 percent for the possibility of unreported injuries arising from single-car accidents (see section I.A. above) adds 119 injuries with medical expense to the 1,816, for a total of 1,935 (See EXHIBIT NY-2, line (3), column (18)). Each of these additional 119 injuries (which are the cases involving small expenses, as indicated in section I.A. above) with some medical expense is valued at a cost approximately one-half that of the average reported medical expense (\$318), or \$159.

Total estimated medical expenses are summarized below:

	<u>Number</u>	<u>Average Cost</u>	<u>Total Cost</u>
Reported Injuries With Medical Expense	1,816	\$318	\$577,488
Additional Single-Car Injuries	<u>119</u>	<u>159</u>	<u>18,921</u>
Total	1,935	\$308	\$596,409

Medical expense under the proposed system is thus an estimated 37.7 percent of the present system's total loss costs (See EXHIBIT NY-1, line (4)).

5. Income Loss

From EXHIBIT NY-2, line (7), column (18) above, the number of injured persons in the insured car with some income loss is 51⁴, or 27 percent of those injured. However, of those persons injured in the other car in multi-car accidents, 45 percent claimed that they suffered some income loss (EXHIBIT NY-2, line (6), column (9)). This disparity is partly explained by the fact that the 45 percent figure is artificially inflated because most of those injured in the other car had received bodily injury liability claim settlements and would naturally have been inclined to exaggerate their real or imagined losses in order to justify the settlement.

There is an additional reason to question the reliability of a 45 percent income-loss frequency figure reported by injured occupants of the other car. Only slightly more than 40 percent of the total of those injured in automobile accidents are employed (see A.I.A. REPORT, p. 16), which implies the extremely unlikely possibility that virtually everyone in the other car who has

been injured, has a job and presents a liability claim under the present system incurs income loss to the extent of at least one day's wages, regardless of the extent of his injury.

These data may be compared with preliminary data from the D.O.T. Closed Claim Survey - New York portion, Table 75, which indicate that of those persons who actually receive a bodily injury liability claim settlement, only some 36 percent suffer any income loss. (For further discussion of the D.O.T. Closed Claim Survey, see NEW YORK REPORT, at note 26.)

In keeping with the overall attempt to avoid underestimating costs under the proposed system, the number of injured persons with income loss is adjusted upwards by 20 percent to 617, resulting in a frequency figure of 32 percent. (See also A.I.A. REPORT, COST STUDY, Exhibit II, Sheet 2).

The average income loss for those injured persons reporting some income loss is \$666. It should be noted that the 103 additional income loss cases added by the 20 percent upward adjustment are included at the overall average value of \$666 per case and not at the significantly lower \$377 average per case for the 45 percent in the other car who claimed some income loss.

The adjustment of 6.54 percent for the possibility of unreported injuries arising from single-car accidents (see section I.A. above) adds 40 injuries with income loss to the already adjusted estimate of 617, for a final adjusted total of 657. Each of these additional 40 injuries with income loss is valued at approximately one-half the cost of the average reported injury with income loss (\$666), or \$333.

Total estimated income loss costs are summarized below:

	<u>Number</u>	<u>Average Cost</u>	<u>Total Cost</u>
Reported Injuries With Income Loss	617	\$666	\$410,922
Additional Single-Car Injuries	<u>40</u>	<u>333</u>	<u>13,320</u>
Total	657	\$646	\$424,242

Income loss under the proposed system is thus estimated at 26.8 percent of current total liability loss costs. (See EXHIBIT NY-1, line (5)).

6. Other Expense

The three chief elements of other expenses are Paid-Help, Transportation and Miscellaneous expenses. Funeral Expenses, which are included in the national survey's summary of other out-of-pocket costs, are not included, since such

expenses are not recoverable as no-fault benefits under the Department's proposal but are included as benefits recoverable under residual tort liability under the proposed system (see section I.C. - Item 16 below).

In determining the percentage of persons who would recover these other expense costs and the average cost of each such recovery, the approach, which is primarily theoretical, of the national survey is relied upon. (See A.I.A. REPORT, COST STUDY, Exhibit IV, Sheet 1, lines (10), (11), (13), (14), (19), (20), column (18) for the percentage and average cost values given in the following discussion.)

a. Paid-Help. It is estimated that some 12 percent of all injured persons would require some paid-help, at an average value of \$215. Since the estimated total of those who sustain personal injury is 2,037, the cost of paid help is estimated as follows:

$$(.12 \times 2,037) \times \$215 = \$52,460$$

Note that the 2,037 figure includes the additional adjustment, at full average cost, for the possible underreporting of single-car injuries. (See section I.A. above).

b. Transportation. The frequency for transportation expense is estimated at 4 percent of injuries, at an average cost of \$81. The cost of transportation expense is thus estimated, as follows:

$$(.04 \times 2,037) \times \$81 = \$6,561$$

c. Miscellaneous. Similarly, the frequency for miscellaneous expense is estimated at 9 percent of injuries, at an average cost of \$164. The cost of miscellaneous expense is thus estimated, as follows:

$$(.09 \times 2,037) \times \$164 = \$30,012$$

The sum of the foregoing three elements of other expense costs is thus \$89,033, or an estimated 5.6 percent of the present system's total loss costs. (See EXHIBIT NY-1, line (6) above.)

7. Additional Cost of Long-Term Cases

The national survey includes the cost of long-term cases only to the extent of the first 99 weeks of disability. This approach has been criticized as underestimating the cost of providing full benefits, without any time limit, to those with permanent total disabilities. (See A.M.I.A. REPORT, pp. 5, 6, 35-37).

An estimate is made for the additional cost of such cases on a reasonable basis. The A.M.I.A. estimates that there are 2.4 permanent total disability cases in the national survey (see A.M.I.A. REPORT, p. 35). This would imply (since New York makes up about 35 percent of the national survey) that 0.84 permanent total cases would be expected in the New York portion of the total sample. Analysis of NY TABLE C-1 (see APPENDIX to this Supplement) indicates two New York cases are characterized as permanent disabilities. The national survey definition

of permanent disability is a relatively broad one which encompasses those persons who are permanently disabled (in the workmen's compensation sense) as well as those persons disabled beyond 99 weeks. Included within the definition are all persons who suffer substantial inability to perform their daily duties or who suffer serious permanent partial disability. A conservative estimate of 2.5 New York long-term disability cases is here included.

It must be emphasized that in the proposed system, which provides only for actual economic loss, a partially disabled person who is not prevented from performing his daily work tasks would not be eligible for benefits. On the other hand, if a disability resulted in actual loss of income, such lost time cases are already included in the survey data.

A summary description is given of the general procedure used to determine the average additional benefit for income loss because of total disability beyond 99 weeks:

a. The average weekly wage in the New York data is \$130, or \$6,760 annually. (Adjusted for average income taxes, this value would be \$5,950. See section I.C. - Item 12 below for discussion of income tax offset in long-term cases.) A distribution of wages about this average is computed.

b. The Social Security benefit which would be payable for each age and family group size in the distribution is calculated to determine the average Social Security offset for each grouping. It is observed that the actual Social Security benefit utilizing up-to-date benefit levels is considerably in

excess of the \$1,397 used in A.M.I.A. REPORT, p. 36. (The A.M.I.A. value appears to be the average for all workers, regardless of the date of disability. It thus includes workers disabled many years ago, when benefit levels were significantly lower than they are now.) The exhibit below indicates how actual Social Security benefit payments, computed for the average wage, could reduce the net liability of insurers:

(1)	(2)	(3)	(4)	(5)
<u>Family Description</u>	<u>Average Wage</u>	<u>Net Wage After Tax (2) x .88</u>	<u>Social Security Annual Benefit</u>	<u>Net N.Y. Annual Benefit (3)-(4)</u>
Disabled Only	\$6,760	\$5,950	\$1,950	\$4,000
Disabled + Spouse	6,760	5,950	1,950	4,000
Disabled + Spouse + 1 child	6,760	5,950	3,900	2,050
Disabled + Spouse + 2 children	6,760	5,950	4,200	1,750

c. The net average annual benefit is adjusted to reflect these Social Security benefits through age 64 and the equivalent of lost pension after age 65. It is assumed that 90 percent of injured workers are eligible for Social Security benefits.

d. To obtain the present value of each dollar of annual benefit, the present values by age group are calculated based on termination rates due to death or recovery from disability through age 64 and on mortality alone after age 64. Termination rates are taken from Bayo's graduated rates for O.A.S.D.I. male disability beneficiaries for each age, with mortality rates beyond age 64 selected to maintain the relationship between the death termination rates of O.A.S.D.I. male disability cases and total United States male death rates. (See F. BAYO, TERMINATION EXPERIENCE OF DISABLED-WORKER BENEFITS UNDER OASDI, 1957-63 -

U.S. Dept. of Health, Education and Welfare, Actuarial Study No. 65.) Bayo's tables are used as representing the best currently available mass data on the actual disability experience of disabled workers in the population generally. These tables are based on the considerably higher death rates experienced by disabled workers and the large number of terminations due to recovery from disability. O.A.S.D.I. terminations resulting from recovery from disability have risen sharply in the past few years and reflect the efforts of Social Security Administration rehabilitation programs.

The positive effects of rehabilitation, which is of greatest importance in long-term cases, have been described succinctly:

"Our experience...in the workmen's compensation field and, more recently, in certain automobile liability cases, has convinced us that prompt medical treatment and prompt commencement of rehabilitation procedures can dramatically reduce the actual amount of loss of earnings, medical expenses, permanent impairment, and pain and suffering."

Letter from Edmond Rondepierre, Assistant General Counsel, Insurance Company of North America, to N.Y.S. Ins. Dept., November 24, 1969, at 8. Early rehabilitative treatment of automobile accident victims (under a first-party automobile reparations system such procedures would begin immediately) should prove even more effective than under the O.A.S.D.I. program, with its six-month waiting period. It is believed that the possible additional costs of such rehabilitative procedures would be more than overcome by the resulting reduction in long-term income loss and medical expense.

e. It is assumed that there would be no death or recovery during the first two years, because only disability cases lasting more than 99 weeks are being considered. A 5 percent interest rate is adopted as a reasonable return on long-term fixed income funds based on analysis of recent investment yields. The Department proposal could, however, easily provide for a variable benefit program (e.g., to keep pace with inflation). Long-term investment in variable income securities by insurers would then provide the additional return necessary to offset the change in benefit levels with time.

f. The average additional benefit is determined by obtaining the average cost for each age and family group and applying a distribution of wage earners by age and family group to these average costs.

g. The resulting calculated present value first party net insurance costs for disability benefits beyond 99 weeks are actually somewhat below \$20,000 per case. A rounded average cost of \$20,000 is, nevertheless, adopted.

Since the number of expected cases is 2.5, the total additional cost for long-term disabling injuries is estimated as \$50,000, or 3.2 percent of the current fault insurance system's loss costs. (See EXHIBIT NY-1, line (7) above).

8. Deferred Benefit to Disabled Children

The proposed system would provide benefits for future income loss to all wage earners. In claims involving totally disabled dependent children with no wage income of their own, the wage loss payments would be deferred until the age when the

child could be presumed to have entered the working force (if the child remained alive and were still totally disabled at that time).

For this cost valuation, it is estimated conservatively that the number of totally disabled children would be equal to approximately 80 percent of the number of permanent total cases among wage earners (i.e., $.80 \times 2.5 \text{ cases} = 2 \text{ cases}$). It is observed, however, that the number of non-wage earning totally disabled dependent children would probably fall below 80 percent of the number of totally disabled wage earners. (See A.M.I.A. REPORT, p. 24, for automobile accident distributions of deaths generally and of wage earner deaths, both distributions by age at time of death. On the assumption that the distribution by age of permanently disabled automobile accident victims would closely resemble that for deaths, one would expect the number of total disabilities among children to be no more than 60 to 70 percent of the number among the working population.)

The average value of each case is computed from the present value at the time of first payment-assumed to be age 18 - of an annuity payable continuously thereafter. The present value used is 8.59. (See F. BAYO, TERMINATION EXPERIENCE, Tables 11 and 12, pp. 23, 25, cited in section I.C. - Item 7 above, for the present value of an annuity at age 18, at 5 percent interest. The 8.59 value is derived by extrapolation from the average of the two tables cited, since one is for men and one for women. Although the Social Security tables do not go beyond age 65, the inclusion of benefit payments beyond age 65 adds a relatively insignificant amount to the total cost.)

Either the Legislature or Insurance Department regulation or the policy forms of insurance companies could be expected to determine the precise level of an annuity benefit to disabled children. It is assumed here that one reasonable possibility for children who had never entered the work force would be the maximum benefit provided to totally disabled workers under the workmen's compensation law. This value has been judged by the Legislature to be adequate compensation for those who are already in the labor force and have been injured at their jobs. The New York workmen's compensation maximum disability benefit at the time of the survey was \$60 a week, or \$3,120 a year.

The product of 8.59 and \$3,120 is \$26,800, which is increased to \$31,250 to provide for a safety margin and for those special cases in which future potential income loss would be demonstrably in excess of \$3,120. No reduction is made in this average value of \$31,250 even though in most cases payment would be deferred until age 18. The combined effects of interest, rehabilitation and mortality would be expected to reduce the estimated \$31,250 value at age 18 to some discounted value at the onset of disability:

a) Interest. One would normally discount the \$31,250 value back to the onset of disability. The assumed interest rate of 5 percent, however, would be largely overcome by the gradual increase in workmen's compensation maximum benefit, since presumably the disabled child would be paid the maximum workmen's compensation benefit prevailing at the time the child

reached age 18 and not the benefit in effect at the time of the accident. Workmen's compensation permanent total maximum weekly benefit payments increased from \$28 in 1945 to \$60 in 1967, or at an annual compounded rate of increase of about 3 1/2 percent. The net effect of the interest offset would thus be reduced from 5 percent to 1 1/2 percent.

b) Rehabilitation. No reduction has been made for the effect of immediate and comprehensive rehabilitative programs (see also section I.C. - Item 7 above) which could be especially valuable in the treatment of young children. Rehabilitative procedures and special training programs from the onset of disability to age 18 could be expected to assist and encourage many otherwise disabled children to enter the work force.

c) Mortality. Despite the fact that mortality rates for totally disabled lives are in excess of mortality rates for the general population, no reduction has been made for even the incidence of normal child mortality from the date of accident to attainment of age 18.

No credit for any of these three possible adjustments was taken in this cost evaluation.

The total estimated cost of providing deferred benefits for disabled children, i.e., the product of the number of claims (2.0) and the average cost per claim (\$31,250), is thus \$62,500, or 3.9 percent of current bodily injury liability loss costs. (See EXHIBIT NY-1, line (8) above).

9. Total Economic Loss

Total economic loss under the proposal (see EXHIBIT NY-1, line (9) above) is estimated as the sum of the component elements of loss cost under the proposed compensation system, viz., medical expense, income loss, other expense, additional cost of long-term cases, and the deferred benefit to disabled children. It is thus equal to (see EXHIBIT NY-1):

Lines (4) + (5) + (6) + (7) + (8) = \$1,222,184,
or 77.2 percent of the bodily injury loss costs of the present liability system.

10. Offset for Medical Collateral Sources

The proposed system will provide full medical benefits to the extent that such benefits are not reimbursable from other medical coverages. Such other medical coverages would include individual hospital and medical insurance, group hospital and medical insurance, workmen's compensation and medicare. Benefits obtained through welfare programs would not be included.

The New York portion of the national survey makes available information about group hospital and medical insurance, workmen's compensation, and medicare. From NY TABLE B-1 (see APPENDIX to this Supplement) the total number of persons who recover from each collateral source is determined by using the following formula:

$$\text{Number who Recover} = \sum_i \left[\frac{\text{Total Number with Medical Loss}}{\text{Known} + \text{Unknown} + \text{Not Available}} \times \frac{\text{Known} + \text{Unknown}}{\text{Known} + \text{Unknown} + \text{Not Available}} \right]$$

where i = Size of Medical Expense Interval (excluding 0).

The total dollar recovery from each collateral source is calculated using the following formula:

$$\text{Dollars Recovered} = \sum_1 \left[\frac{\text{Total Number with Medical Loss}}{\text{Known + Unknown + Not Available}} \times \frac{\text{Known + Unknown}}{\text{Known + Unknown + Not Available}} \times \text{Average Amount Recovered} \right]$$

where 1 = Size of Medical Expense Interval (excluding 0).

(See also A.I.A. REPORT, COST STUDY, Exhibit V, Sheet 2, Notes (a) and (b). Amounts are adjusted to fit in the size of Medical Expense range according to the rule that no one should recover more than his Medical Expense.) This latter formula is conservative in that it adds no amount for collateral source recoveries of Unknown value, where there is no Known recovery in the same Size of Medical Expense Interval from which an average value could be taken.

The computed collateral source recoveries are summarized in EXHIBIT NY-3 below.

Unfortunately, the design of the national survey mingles individual hospital and medical insurance recoveries with recoveries from automobile medical payments insurance coverage. Since the latter would not be a source of recovery under the proposed system it is not possible to determine (from either the national survey or the New York data) what individual hospital and medical insurance recoveries would be. Individual hospital and medical policies would nevertheless be a significant collateral source of recovery under the proposal, and an estimate of this value is made from other sources.

Health insurance benefit payments under individual

EXHIBIT NY-3

AUTOMOBILE CLAIM SURVEY - NEW YORK
 COLLATERAL SOURCE RECOVERIES FOR MEDICAL EXPENSES
 BY NUMBER OF PERSONS RECOVERING
 AND AMOUNT OF RECOVERY

	<u>Number of Persons</u>		<u>Amount of Recovery</u>	
	<u>Number</u>	<u>% of Total</u>	<u>Amount</u>	<u>% of Total</u>
Total Medical Expenses	1,758	100.0%	\$462,354	100.0%
<u>Collateral Source Recoveries</u>				
Group Hospital & Medical Insurance	418	23.8%	\$101,397	21.9%
Workmen's Compensation	69	3.9	24,479	5.3
Medicare	50	2.8	16,579	3.6

policies in the United States amount to approximately 26 percent of benefit payments under group health insurance policies.

(See HEALTH INSURANCE INSTITUTE, 1968 SOURCE BOOK OF HEALTH INSURANCE DATA, p. 36.) Applying this percentage to the 21.9 percent of medical expense recoveries from group hospital and medical insurance (EXHIBIT NY-3) would produce an estimate of 5.7 percent for recoveries through individual hospital and medical insurance programs. It is believed, nevertheless, that collateral source recoveries from individual hospital and medical policies would be expected to provide reimbursement for only about 4.5 percent of all automobile medical expenses. All medical collateral sources would thus pay for an estimated 35.3 percent of incurred medical costs (21.9% + 5.3% + 3.6% from EXHIBIT NY-3, added to 4.5 percent for individual hospital and medical recoveries).

This value is slightly higher than the national survey's 31.5 percent estimate of collateral source recoveries for medical expense. Aside from relatively slight variations due to the composition of the samples, the primary difference in the two results is the exclusion from the national survey of an amount for recoveries under individual hospital and medical insurance policies.

The 35.3 percent estimate of collateral source recoveries for New York appears low, especially in view of the fact that more than 90 percent of New Yorkers have some form of health insurance coverage. (See NEW YORK REPORT at note 48) It is possible that the national survey methodology of interviewing claimants after claim settlement would lead to the possible

exaggeration by the claimant of his medical bills and an understatement of his duplicate sources of recovery, in order to justify the medical payments or bodily injury claim settlement he had just received. Exaggeration of medical bills and understatement of recovery sources would both act to exaggerate costs under the proposed system. To a somewhat lesser extent, this argument would apply also to income loss and income loss recoveries.

Application of the 35.3 percent to estimated total Medical Expense incurred under the proposed system (see EXHIBIT NY-1, line (4) above) produces:

$$.353 \times \text{Line (4)} = \$210,532,$$

or an expected reduction of 13.3 percent from current bodily injury liability loss costs, attributable to medical collateral source recoveries. (See EXHIBIT NY-1, line (10) above).

11. Offset for Income Collateral Sources

The proposed system's income loss benefits are payable net of the amount recoverable from other sources. From NY TABLE C-1 below the total dollars of wage loss recovered from each collateral source is calculated, using the following formula:

$$\text{Dollars Recovered} = \sum_{i, j} \left[\frac{\text{No. of Days Lost}}{7} \times \frac{\text{Known} + \text{Unknown}}{\text{Known} + \text{Unknown} + \text{Not Available}} \times \frac{\text{Weekly Average Recovered Amount}}{7} \right]$$

where i = Length of Disability Interval
j = Weekly Wage Interval

and the Average Recovered Amount has been adjusted where necessary to fit in the Weekly Wage Interval. (See also A.I.A. REPORT, COST STUDY, Exhibit VI, Sheet 2.) In computing total dollars

recovered, where the value of "Known" is 0 but where there is a positive value entered for "Unknown" (and thus the "Average Recovered Amount" would be entered as 0, which merely means that the average is not reported), the "Average Recovered Amount" used is the overall average recovery.

The amount of dollars from each collateral source is then related to total wages lost:

$$\text{Total Wages Lost} = \sum_{i, j} \left[\frac{\text{No. of Days Lost}}{7} \times \text{Weekly Average Amount Lost} \right]$$

where i = Length of Disability Interval
j = Weekly Wage Interval.

A summary of the availability of recovery for wage loss by type of collateral source is shown in EXHIBIT NY-4 below.

It is of some interest that despite the existence of the New York Disability Benefits Law the aggregate estimated collateral source recovery of 24.2 percent in New York is not significantly different from the A.I.A.'s national estimate of 23.8 percent. However, New York injuries account for some 35 percent of the national total. Furthermore, similar statutory disability benefit programs exist in California and Rhode Island (which are both included in the national sample). Thus, the similarity of national survey and New York results is not so surprising as it might first appear.

Two other considerations, however, imply that the 24.2 percent value may be an underestimate:

a. Although the proposed system includes sick leave as a collateral source, the A.I.A. analysis contains no specific

EXHIBIT NY-4

COLLATERAL SOURCE WAGE RECOVERY
BY TYPE OF COLLATERAL SOURCE

<u>Collateral Source</u>	<u>Percent of Wages Recovered</u>	
	<u>N.Y.</u>	<u>National*</u>
Statutory Disability	5.5%	5.8%
Workmen's Compensation	3.6	2.2
Social Security	1.7	1.0
Individual Disability	1.5	1.9
Group Disability	5.8	6.5
Wage Continuation	6.1	6.2
Welfare	**	0.2
Total	24.2%	23.8%

*See A.I.A. COST STUDY, Exhibit VI, Sheet 1.

**Welfare is not a primary collateral source under the New York proposal.

provision for including this source as an offset to wage loss. Accumulated sick leave is nevertheless a significant primary source of wage loss recovery for many employees, and provides the major collateral source for most government workers, who are outside the scope of the Disability Benefits Law.

b. Despite the fact that 90 percent of the population are covered for Social Security benefits in the event of continuing disability after six-months, few such cases are reported in the sample. It is possible that many potential claimants may not today collect such benefits because they are unaware of their rights under the federal program. Since Social Security benefits would be a primary source of recovery under the proposal, insurers would be aware of their claimants' eligibility: presumably claimants would be instructed in filing for their benefits, while insurers would make the appropriate deduction from income loss payments.

When the 24.2 percent is applied to total income loss under the proposed system (see EXHIBIT NY-1, line (5) above), it produces:

$$.242 \times \text{Line (5)} = \$102,667,$$

or an estimated 6.5 percent of the present liability system's costs as an offset for collateral sources of income. (See EXHIBIT NY-1, line (11) above).

12. Average Income Tax Offset

The proposed system would pay for an accident victim's wage loss, net of amounts recoverable from other sources and

net of state, federal and municipal taxes which would have been payable on the lost income. Separate calculations of the effect of this income tax reduction are made for short-term disability cases (those lasting less than six months) and long-term cases (those lasting six months or more).

For cases of income loss lasting less than six months, the short-term wage loss is calculated utilizing a New York distribution of wages, total income and deductions, by income tax bracket and marital status. (See NEW YORK STATE DEPT. OF TAXATION & FINANCE, ANALYSIS OF 1967 NEW YORK STATE PERSONAL INCOME TAX RETURNS.)

Taxable wages for each gross income bracket are derived by reducing income from wages by the percentage of deductions to total income for each income-size bracket. An average annual taxable wage is calculated for each gross income-size bracket, separately for single taxpayers and for all others. Each average annual taxable wage is then reduced 10 percent to reflect wage loss arising from the average short-term duration of disability. (NY TABLE C-1 - see APPENDIX to this Supplement - indicates that disabilities lasting less than six months have an average duration of approximately 20 days.) The state and federal income tax rates applicable to each of the reductions in average annual taxable wage are applied in recognition of the fact that the first dollars of wage loss come off the top, or highest taxed, of the victim's annual earnings. For the all other category, the federal rates applicable to married joint returns (the lowest rate) are used. When weighted by total

wages in each bracket, the aggregate tax offset factor is computed as 26.0 percent. (The inclusion of New York City income taxes would increase this value further.) As a safety margin and because of the practical limitations imposed on any general system of classification by tax bracket, 21 percent is used as an estimate of the tax offset in short-term cases.

For disabilities lasting at least six months, the average annual effective income tax rate is used in computing the income tax offset. A summary of personal income taxes from 1967 tax returns of New York State residents (including nontaxable returns) is shown below:

Total income reported	\$53,292,000,000
New York State income tax paid	\$ 1,539,000,000
Income tax as percent of total income	3.9%

(Source: NEW YORK STATE DEPT. OF TAXATION & FINANCE, NEW YORK PERSONAL INCOME AND TAX LIABILITY FOR INCOME YEAR 1967, BY COUNTY OF RESIDENCE, October 11, 1968)

A similar summary of federal personal income taxes from New York returns shows:

Total income reported	\$56,217,000,000
Federal income tax paid	\$ 7,798,000,000
Income tax as percent of total income	13.9%

(Source: UNITED STATES DEPT. OF TREASURY, INTERNAL REVENUE SERVICE, STATISTICS OF INCOME FOR PERSONAL INCOME TAX RETURNS FOR TAXABLE YEAR 1967, July 1969. Returns include military with New York APO, Puerto Rico, Virgin Islands and Panama Canal Zone.)

Combined state and federal income taxes for New York residents are approximately 16.8 percent of income. (Inclusion of New York City income taxes would increase this value further.) Nevertheless, not all of this personal income is attributable to wages; additionally, the state and federal tax data are not strictly commensurate. The effect of income taxes on net long-term income loss is thus estimated at only 12 percent.

The combination of 21 percent for short-term cases and 12 percent for long-term cases on a two-to-one weighting yields a final average 18 percent factor as the estimated income tax offset to be applied to net income loss. (NY TABLE C-1 - see APPENDIX to this Supplement - indicates that approximately one-third of the total days of disability are attributable to cases lasting at least six months.)

Application of 18 percent to income loss net of recoveries from collateral sources (see EXHIBIT NY-1 above) produces:

$$.18 \times (\text{Line (5)} - \text{Line (11)}) = \$57,884,$$

or 3.7 percent of the present liability system's loss costs. (See EXHIBIT NY-1, line (12) above.)

13. No Out-of-State No-Fault Benefits

The summary of economic loss costs of the proposed system (see EXHIBIT NY-1, line (9) above) includes expected claims of New York residents, regardless of where their accidents occur. However, the proposed system does not contemplate affording first-party benefits beyond the borders of this State.

From EXHIBIT NY-2, line (1), columns (13) and (14), 103 injuries out of the total of 2,037 adjusted (for possible additional single-car injuries) New York no-fault injuries involve drivers or passengers in an out-of-state accident, for a total of 5.1 percent. (The comparable value from the national survey is 5.5 percent. See A.I.A. REPORT, COST STUDY, Exhibit IV, Sheet 1.) Applying this percentage to net economic loss (EXHIBIT NY-1 above) produces:

$$.051 \times (\text{Lines (9)-(10)-(11)-(12)}) = \$43,406,$$

or an estimated reduction of 2.7 percent from current fault insurance system loss costs. (See EXHIBIT NY-1, line (13) above.)

14. Liability of Commercial Vehicles

Under the proposed system, the strict liability of the commercial vehicle owner to persons injured in an accident with that vehicle would transfer the resulting loss costs from the private passenger automobile to the commercial vehicle.

The consequent reduction in private passenger loss costs is estimated from an analysis of injuries involving commercial vehicles, as tabulated from the national survey in A.I.A. REPORT, Appendix to Cost Study, Table E-1. (Comparable data for New York alone are not available.) The number of injuries in Vehicle 1 (the insured vehicle, from column (4)), where a commercial vehicle is involved, are added to the number of similar pedestrian injuries (from column (7)). The total is related to the sum of all injuries in Vehicle 1 plus all pedestrian injuries, to produce an estimate of 7.0 percent of all private passenger injuries which are compensated by the commercial

vehicle's insurance policy. This value is then adjusted for the possible understatement of injuries in single-car accidents, where no commercial vehicle is involved (see section I.A. above), which produces an estimate of 6.5 percent as the probable reduction in net economic loss due to the strict liability of commercial vehicles.

The 6.5 percent is applied directly to net economic loss (see EXHIBIT NY-1 above):

$.065 \times (\text{Lines (9)-(10)-(11)-(12)-(13)}) = \$52,490$,
or 3.3 percent of the loss costs of the present liability system. (See EXHIBIT NY-1, line (14) above.) This result is not increased despite the generally greater severity of injury to the occupants of a private passenger car when it collides with a truck than when it collides with another passenger car.

15. Out-of-State Liability to \$10,000/\$20,000

A New York resident who drives in another state will under the proposed system remain subject to that state's laws.

From EXHIBIT NY-2, line (23), columns (12) and (17) above, it is seen that of the total of 1,438 bodily injury liability claims, 92 arose from out-of-state accidents. Assuming these accidents would be settled at \$1,082, the average amount of other bodily injury claims included in the survey (see EXHIBIT NY-1, line (1) above), the total cost of this residual out-of-state liability would be estimated as:

$92 \times \$1,082 = \$99,544$,
or 6.3 percent of present liability loss costs. (See EXHIBIT NY-1, line (15) above.)

16. Death Cases Liability to \$10,000/\$20,000

The proposed system provides, for constitutional reasons, that death cases will continue to be compensated through the tort liability system.

An estimated 21 New York death cases would result in some bodily injury payment under the proposed system. (See NY TABLE F-2 - APPENDIX to this Supplement.) The national survey, by comparison, estimates that 0.9 percent of personal injuries result in death (see A.I.A. REPORT, COST STUDY, p. 16). When related to the estimated 2,037 New York claims under the proposed system this percentage would produce a New York estimate of 18 death claims.

In estimating the average bodily injury liability cost of each death claim under the proposal, no reduction is made even though:

a) All medical expense, income loss, and other expenses prior to death are already included in the total cost (see EXHIBIT NY-1, line (9)) of the proposed system at an average value in excess of \$2,000 per case. (See NY TABLE F-2 - APPENDIX to this Supplement.) Presumably, many present tort recoveries resulting from death actions include some amount for medical, income and other economic losses prior to death, especially since such amounts are generally easy to determine and agreement on them can often be reached during the bargaining process effecting a claim settlement. As a result, tort recoveries in death actions under the proposed system might be significantly lower than they are under the present system.

b) Payments for non-economic loss prior to death (e.g., "pain and suffering") would be eliminated under the proposed system and would no longer be expected to be an element of recovery in the total settlement in death cases.

c) There would be some reduction for those death claims in the survey which may arise from out-of-state accidents and thus whose costs would be counted twice: once in costing residual tort liability for out-of-state driving and a second time in costing residual liability for death cases.

Despite the foregoing considerations, the full present cost of death cases under the fault insurance system (up to limits of \$10,000/\$20,000) is included in the costing of death cases under the proposed system, and is adjusted upwards by 12 1/2 percent (on a judgment basis and as an additional conservative element) to account for the possible effect which a mixed system (no-fault payments for personal injury economic losses prior to death; tort recoveries for losses after death) might have on the claims settlement process in death cases.

From NY TABLE F-2 (see APPENDIX to this Supplement), the cost of death cases (up to limits of \$10,000/\$20,000) is thus estimated, as follows:

$1.125 \times (\$184,867 - \$62,500) = \$137,663,$
 resulting in an average value of \$6,555 per claim. The cost of residual liability for death claims is estimated at 8.7 percent of total loss costs under the fault insurance system. (See EXHIBIT NY-1, line (16), above.)

17. Total Loss Costs Under Proposed System

The total estimated loss costs under the proposed system is the sum of economic loss reduced by the various offsets for medical and income collateral sources, income taxes, no out-of-state no-fault benefits, and the effect of strict liability of commercial vehicles, and then, increased by the cost of residual liability in out-of-state and death cases. The total of all loss elements under the proposed system is estimated as 62.7 percent of the current loss costs under the fault insurance system. (See EXHIBIT NY-1, line (17), above.)

II. Expense Costs

Because of the substantial reduction in the controversion and litigation of claims, it is expected that loss adjustment expenses for the vast majority of claims handled on a no-fault basis under the proposed program would be significantly lowered. It is believed that such loss adjustment expense costs would be approximately equal to 5 percent of pure loss costs, which is roughly the relative loss expense cost level for individual accident and health policies written by private insurance carriers. (See also A.I.A. REPORT, COST STUDY, Exhibit I, Sheet 3.) The 5 percent loss adjustment expense value is applied against total economic loss under the proposal (not reduced by collateral source offsets, etc).

Loss adjustment expense costs for residual liability coverages - for out-of-state and death cases - would be expected to remain unchanged at the 19 percent ratio to pure loss costs which exists today under the fault insurance system.

Since total economic loss under the proposed system is estimated at 77.2 percent of loss costs under the present system (see EXHIBIT NY-1, line (9) above) and residual liabilities are estimated at 15.0 percent of loss costs under the present system (see EXHIBIT NY-1, line (15) plus line (16) above), loss adjustment expense costs under the proposal are estimated at:

$$(.05 \times .772) + (.19 \times .15) = 6.7\%$$

of loss costs under the present system, or

$$.067 \div .627 = 10.7\%$$

of loss costs under the proposed system (where .627 represents total loss costs under the proposed system, expressed as a ratio of the present system's loss costs - from EXHIBIT NY-1, line (17) above).

No projection has been made of any relative savings resulting from economies in insurance companies' other operating expenses, such as the costs of general administration and production. It is probable, however, that most insurers would actively pursue new methods to reduce at least some of their transaction costs, especially in light of their reduced premium volume. Anticipated insurer transaction costs have not been reduced to recognize the possible effect of group selling on overhead expenses or the potential for packaging through the integration of first-party automobile insurance with other insurance coverages.

It is assumed, therefore, that transaction costs (except for loss adjustment expenses) would under the proposed system bear the same relationship to losses as these costs now do under the present system. Relative private passenger personal injury premium costs may then be expressed as a ratio of loss and loss adjustment expense costs:

$$\begin{aligned}
 \text{Ratio of Proposed to Present System Premiums} &= \frac{\text{Loss} + \text{Loss Adjustment (Proposed System)}}{\text{Loss} + \text{Loss Adjustment (Present System)}} \\
 &= \frac{.627 + .067}{1.000 + .190} \\
 &= .583
 \end{aligned}$$

(This discussion is summarized in EXHIBIT NY-5 below, and in the NEW YORK REPORT, Appendix B, Table II, p. 145.)

III. Premium Comparison of Personal Injury - Statutory Coverages

Average New York Insurance Rating Board annual private passenger premium rates (effective December 15, 1969) are \$87.50 for minimum statutory limits of \$10,000/\$20,000 bodily injury liability insurance plus \$3.00 for statutory uninsured motorist coverage, for a total of \$90.50. Estimated premiums under the proposed system for statutory coverages (full personal injury benefits plus residual liability to \$10,000/\$20,000 for out-of-state and death cases) would be .583 of that amount, or \$52.76. Estimated premium savings for statutory personal injury coverages are 42 percent.

IV. Premium Comparison of Personal Injury - Statutory Plus Optional Coverages

A policyholder who purchases a typical package of personal injury coverages would today carry (in addition to the statutory coverages described above) \$1,000 medical payments plus bodily injury liability increased limits to \$25,000/\$50,000. Average New York annual medical payments premiums are \$13.00, while the increased limits portion of the bodily injury liability premium is 16 percent more than the basic limits coverage (\$10,000/\$20,000) already included in the premium for statutory coverage.

EXHIBIT NY-5

ESTIMATED PERSONAL INJURY LOSS AND
EXPENSE COSTS UNDER PROPOSED SYSTEM
AS A PERCENT OF CURRENT BODILY
INJURY LIABILITY INSURANCE COSTS

1. Present System Pure Losses	100.0%
2. Loss Adjustment	<u>+19.0</u>
3. Total Losses and Loss Adjustment	119.0%
4. Proposed System Pure Losses	62.7%
5. Loss Adjustment ((line 4) X 10.7%)	<u>+ 6.7</u>
6. Total Losses and Loss Adjustment	69.4%

Assuming Equal Overhead and Administration
Expenses for the Two Systems:

7. Ratio Proposed to Present System ((line 6) ÷ (line 3))	.583
8. Premium Savings (1.000 - (line 7), rounded, as %)	42%

Total annual premium costs for such a policyholder under the present system are thus:

$$\$87.50 + \$3.00 + \$13.00 + (\$87.50 \times .16) = \$117.50$$

Under the proposed system, a comparable compulsory plus optional package would include full personal injury benefits plus \$1,000 medical payments for out-of-state cases plus residual liability increased limits to \$25,000/\$50,000 for out-of-state and death cases. Since out-of-state cases account for some 6.3 percent of present system costs and since death cases account for 8.7 percent of present system costs (see EXHIBIT NY-1, Lines (15) and (16) above), it is anticipated that out-of-state medical payments coverage would equal 6.3 percent of its present total cost, while \$25,000/\$50,000 increased limits coverage for death and residual liability would be 6.3 percent plus 8.7 percent, or 15 percent of such increased limits costs today. Statutory plus optional coverages under the proposal are estimated at:

$$(\$90.50 \times .583) + (\$13.00 \times .063) + (\$87.50 \times .16 \times .15) = \$55.68$$

Anticipated premium savings under the proposal are:

$$\frac{\$117.50 - \$55.68}{\$117.50} = 53\%$$

Note that no deduction has been made in these calculations for the additional anticipated offset due to the strict liability of taxicabs, or for the strict liability of those categories of obnoxious drivers (e.g., drunks) with additional cost burdens.

DAMAGE TO PROPERTY:
COSTS UNDER PRESENT AND PROPOSED SYSTEMS

I. Introduction

The development of cost comparisons for damage to property under the present and proposed systems derives largely from the New York portion of the national survey's 16,000 property damage and collision claim reports. (See A.I.A. REPORT, p. 13) The raw New York data are shown in NY TABLES D-1, D-2 and D-3 (See APPENDIX to this Supplement) and are summarized in EXHIBITS NY-6 and NY-7 below.

II. Premium Comparison of Property Damage- Statutory Coverages

From the New York data summarized on Lines (16) and (17) of EXHIBIT NY-7, it is observed that coverage for damage to property other than an automobile accounts for 5.1 percent of total property damage liability losses. The national survey, by comparison, includes 6.3 percent for damage to property other than an automobile. (See A.I.A. REPORT, COST STUDY, EXHIBIT IX, Sheet 2.)

An allowance is made also for out-of-state property damage liability coverage. The New York data (See EXHIBIT NY-7, lines (10) and (17)) indicate that such out-of-state property damage liability costs amount to 2.3 percent of property damage losses. Since this estimate does not include all out-of-state liability claims against New York policyholders, the national survey's proportion of 6.4 percent for out-of-state automobile plus non-automobile property damage residual liability is used. (See A.I.A. REPORT, COST STUDY, EXHIBIT IX, Sheet 2; see also A.M.I.A. REPORT, p.39.)

EXHIBIT NY-6

DAMAGE TO PROPERTY

COMPULSORY PLUS OPTIONAL LOSS COSTS

PRESENT AND PROPOSED SYSTEMS COMPARED

I. Present System

A. Collision - Net		\$493,573
1. Gross	\$514,909	
2. Subrogation	21,336	
B. Property Damage Liability		168,990
1. Car & Contents - Under plan	150,901	
2. Car & Contents - Not under plan	8,595	
3. Other Property	9,494	
C. Collision and Property Damage Liability		662,563

II. Proposed System

A. Present Property Damage Liability - Car & Contents Under Plan (I.B.1)	150,901	
B. Reduction due to application of average \$68 deductible (II.A. x .30)		45,270
C. Reduction due to in-state strict liability of commercial vehicles [(I.C. x .936) - II.B.] x .055		31,619
D. Total Reductions Under Proposed System II.B. + II.C.		76,889
E. Total Reductions as Percent of Present System Loss Costs (II.D. ÷ I.C.)		11.6%

EXHIBIT NY-7
DAMAGE TO PROPERTY
SUMMARY OF NEW YORK LOSSES

Type of Claim	Settlements			Paid to Other Insurance Companies		
	No. of Claims*	Average Cost**	Amount	No. of Claims*	Average Cost**	Amount
<u>Policyholder (Collision)</u>						
1. One car - in state	307	\$389	\$119,423			
2. Multi-car - in state	1,132	336	380,352			
3. Out of state	<u>46</u>	<u>329</u>	<u>15,134</u>			
4. Total	1,485		514,909			
<u>Car and Contents (Property Damage)</u>						
Under Plan:						
5. Multi-car - in state - contents policyholder's car	5	80	400	-	-	-
6. Multi-car - car and contents - other	<u>663</u>	<u>227</u>	<u>150,501</u>	<u>54</u>	<u>\$368</u>	<u>\$19,872</u>
7. Subtotal	668		150,901	54		19,872
Not Under Plan:						
8. Multi-car - in state	15	303	4,545	3	392	1,176
9. Out of state - contents policyholder's car	-	-	-	-	-	-
10. Out of state - car and contents - other	<u>15</u>	<u>270</u>	<u>4,050</u>	<u>1</u>	<u>288</u>	<u>288</u>
11. Subtotal	30		8,595	4		1,464
12. Total	698		159,496	58		21,336
<u>Other Property (Property Damage)</u>						
13. One car - in state	40	203	8,120	2	136	272
14. Multi-car - in state	7	164	1,148	-	-	-
15. Out of state	<u>2</u>	<u>113</u>	<u>226</u>	<u>-</u>	<u>-</u>	<u>-</u>
16. Total	49		9,494	2		272
17. Total (Property Damage)	747		\$168,990	60		\$21,608

* Policies with Property Damage and Collision Coverage
** All policies.

The national survey indicates that liability costs for damage to contents of the policyholder's car in multi-car, in-state accidents amounts to 0.6 percent of total property damage losses. (See A.I.A. REPORT, COST STUDY, EXHIBIT IX, Sheet 2.) The cost of all contents losses (those incurred by both driver and passengers) is estimated as approximately 1.5 percent of property damage liability losses.

The total cost of compulsory non-automobile property damage coverage under the proposed system is thus estimated at

$$5.1\% + 6.4\% + 1.5\% = 13.0\%$$

of the present system's property damage liability costs. In this calculation, it is assumed that insurance company overhead costs would be approximately equal under the two systems. No deductions have been made for:

- 1) the additional anticipated offset attributable to the strict liability of commercial vehicles and taxicabs and to those categories of obnoxious drivers (e.g., drunks) with additional cost burdens, or
- 2) the potential additional cost savings arising from the availability of other insurances which cover damage to non-automobile property.

III. Premium Comparison of Property Damage-Statutory Plus Optional Coverages

Comparison of property damage costs under the present system and under the proposal with respect to compulsory plus optional coverages is made by examining losses in New York under present collision (net of subrogation) and property damage policies. (See EXHIBIT NY-6 above).

Savings in loss costs under the proposal would arise from two sources: 1) the application of the average deductible under collision policies to the present system's automobile property damage liability losses, and 2) the strict liability of commercial vehicles for damage to property.

Many of today's property damage liability losses would, under the proposed system, be redistributed as collision losses, and would thus be subject to the applicable deductible of the policyholder. As NY TABLE D-3 indicates (See APPENDIX to this Supplement), the average deductible on collision policies is \$68. Examination of property damage losses, by size of claim, indicates that a \$50 deductible would eliminate 28 percent of all property damage losses, a \$100 deductible would eliminate 47 percent of such losses and a \$250 deductible would eliminate 75 percent. By interpolation, a \$68 deductible can be expected to eliminate about 35 percent of property damage losses. Conservatively, however, 30 percent is selected as the reduction anticipated from application of the average \$68 deductible.

The reduction in property damage costs arising from the strict liability of commercial vehicles involved in collisions with private passenger cars is estimated from the national survey. (See A.I.A. REPORT, COST STUDY, Appendix, Table E-1 (column 3). Separate New York data for commercial vehicle accidents is not available.) For property damage, the effect of this commercial reduction is computed as 6.0 percent. This value is then adjusted for the possible underreporting of single-car accidents in the sample (See discussion above in Personal Injury, section I.A.) to obtain

an estimate of 5.5 percent for the reduction in cost attributable to the strict liability of commercial vehicles. In the interest of conservatism, this result is not increased despite the generally greater severity of damage to a private passenger car when it collides with a truck than when it collides with another private passenger car.

The 5.5 percent value is applied to total collision and property damage losses, after subtracting 6.4 percent of these losses which are attributable to out-of-state claims (since the strict liability of commercial vehicles would apply only within New York) and the amount already credited to the application of the \$68 average collision deductible. The total estimated reduction from the present system's loss costs for damage to property is 11.6 percent. (The calculations are shown in EXHIBIT NY-6 above).

For convenience of calculation, this 11.6 percent estimated loss saving on all damage to property is distributed against both property damage and collision coverages.

The present countrywide premium breakdown of property damage liability and collision coverages, for analytic purposes, may be summarized as follows:

	<u>P.D.</u>	<u>Collision</u>
(1) Pure Loss	.565	.544
(2) Loss Adjustment		
(1)x.16 for P.D.	.090	
(1)x.13 for Collision	<u> </u>	<u>.071</u>
(3) Sub-Total	.655	.615
(4) Other Expenses	<u>.345</u>	<u>.385</u>
(5) Total	1.000	1.000

Under the proposed system, it is anticipated that loss adjustment expenses will most closely approximate loss adjustment expenses under present collision policies, except that the additional costs of subrogation will be eliminated. Nevertheless, as a conservative measure in computing the expense costs under the proposed system, the .13 factor for current collision loss adjustment expenses is used without further reduction. (See A.I.A. REPORT, COST STUDY, EXHIBIT I, Sheet 2.) The national survey assumes that loss adjustment expenses will be reduced to .10, probably because of the anticipated ease of handling only first-party claims and the elimination of the subrogation costs of a mixed system. It is further anticipated that other expenses under the proposed system (general administration, production, taxes, profit) will closely approximate the .345 allowed for other expenses under the present system's property damage coverage. (See A.I.A. REPORT, COST STUDY, EXHIBIT I, Sheet 2.) Such overhead costs will continue to enter into the ratemaking process as a fixed percentage of premiums. Under these assumptions, the property damage and collision costs of the proposed system are calculated as follows:

	<u>P.D.</u>	<u>Collision</u>
(6) Pure Loss: (1)x.884	.499	.481
(7) Loss Adjustment: (6)x.13	<u>.065</u>	<u>.063</u>
(8) Sub-Total	.564	.544

Relating .564 to .655 produces an estimated property damage reduction of 13.9 percent; relating .544 to the same .655 produces an estimated collision saving of 16.9 percent.

These percentages are then applied to average New York (I.R.B.) property damage and collision rates:

$$(\$40.91 \times .861) + (\$91.53 \times .831) = \$111.28,$$

which, when related to

$$\$40.91 + \$91.53 = \$132.44,$$

produces an estimated reduction of 16 percent. The value of \$111.28 can also be expressed as the sum of the compulsory non-automobile property damage and the new form of collision coverages:

$$(\$40.91 \times .13) + (\$91.53 \times 1.1576) = \$111.28,$$

which is essentially the form in which it is presented in the NEW YORK REPORT, Appendix B, Table I (IV.B.), p. 144.

As an additional conservative measure, no deductions have been made in these calculations for the additional anticipated offset due to the strict liability of taxicabs or of those categories of obnoxious drivers (e.g., drunks) with additional cost burdens.

Note also that optional automobile fire, theft and comprehensive insurance has not been considered in the costing of the proposed system, because a) it is currently a no-fault coverage which relates to hazards other than those insured under the fault insurance system, and b) no substantial changes in either coverage or cost are anticipated under the proposal.

PERSONAL INJURY AND DAMAGE TO PROPERTY COMBINED:
COSTS UNDER PRESENT AND PROPOSED SYSTEMS

I. Premium Comparison of Personal Injury and Property
Damage - Statutory Coverages

Present: \$90.50 + \$40.91 = \$131.41

Proposed: \$52.76 + \$5.32 = \$58.08

Estimated Premium Reduction: 56%

II. Premium Comparison of Personal Injury and Property
Damage - Statutory Plus Optional Coverages

Present: \$117.50 + \$132.44 = \$249.94

Proposed: \$55.68 + \$111.28 = \$166.96

Estimated Premium Reduction: 33%

STATE OF NEW YORK
INSURANCE DEPARTMENT

APPENDIX TO THE
ACTUARIAL SUPPLEMENT TO THE
NEW YORK STATE INSURANCE DEPARTMENT REPORT,
"AUTOMOBILE INSURANCE...FOR WHOSE BENEFIT?"

AUTOMOBILE CLAIM SURVEY-
NEW YORK-COMPUTER TABULATIONS

AUTOMOBILE CLAIM SURVEY—CLAIMS CLOSED DURING SURVEY
PRIVATE PASSENGER WITH BODILY INJURY AND MEDICAL—NEW YORK
TABLE A1
ACCIDENT TYPE

PAGE 49

NEW YORK
TABLE A-1

	-- ONE CAR IN STATE --				----- MULTI-CAR IN STATE -----				OTHER CAR UNDER NOT UND.				----- OUT OF STATE -----				GRAND			
	TOTAL	DRIVER	PASSENGER	PEDES.	TOTAL	DRIVER	PASSENGER	PEDES.	TOTAL	DRIVER	PASSENGER	PEDES.	TOTAL	DRIVER	PASSENGER	OTHER	PEDES.	TOTAL		
TOTAL NUMBER OF INJURIES	276	91	92	93	1567	395	342	791	23	16	56	15	12	27	2	1899				
MEDICAL- AMT.-UNKNOWN	249	79	84	86	1363	346	297	688	18	14	49	12	9	26	2	1661				
EXPENSE- AMT.-UNKNOWN	16	7	5	4	121	27	34	55	4	1	4	1	3	0	0	141				
INCOME - AMT.-UNKNOWN	445	346	394	586	245	270	197	207	686	1948	368	246	570	381	18	278				
LOSS - AMT.-UNKNOWN	61	16	25	20	484	88	59	323	7	7	21	4	3	14	0	566				
LOSS - AVERAGE DURATION	42	20	15	7	256	96	70	80	8	2	10	7	2	1	0	308				
LOSS - AVERAGE WEEKLY INCOME	60	75	46	66	226	129	149	120	106	207	20	9	54	17	0	329				
PAID - AMT.-UNKNOWN	136	174	101	132	129	149	120	106	169	169	110	173	116	97	0	130				
HELP - AMT.-UNKNOWN	4	1	1	2	22	5	1	16	0	0	2	0	0	2	0	28				
TRANS- AMT.-UNKNOWN	35	14	13	8	212	58	63	86	2	3	6	3	3	0	0	253				
PORTATION - AMT.-UNKNOWN	88	200	50	51	193	242	40	188	0	0	153	0	0	153	0	175				
FUNERAL - AMT.-UNKNOWN	35	13	14	8	209	58	62	84	2	3	7	3	3	1	0	53				
EXPENSE - AMT.-UNKNOWN	47	6	110	35	45	23	25	54	0	0	53	5	0	69	0	46				
MISCELL- AMT.-UNKNOWN	8	4	1	2	0	0	1	1	0	0	0	0	0	0	0	10				
ANEQUEUS - AMT.-UNKNOWN	29	9	10	10	193	49	60	81	1	2	5	1	3	1	0	227				
OTHER - AVERAGE AMOUNT	1120	1113	0	1127	627	0	230	1023	0	0	0	0	0	0	0	1021				
FACTORS - LOST LIMB-SIGHT	5	1	0	4	3	0	0	3	0	0	0	0	0	0	0	8				
SCARRING	18	4	9	5	47	4	10	32	0	1	0	0	0	0	0	65				
LOSS OF CONSORTIUM	0	0	0	0	21	1	3	15	2	0	0	0	0	0	0	21				
TOTAL TOTAL- IN THOUSANDS	192	62	50	80	578	135	79	276	26	62	26	4	8	14	0	796				
ECONOMIC LOSS UNDER 101	139	56	49	34	738	172	176	377	10	3	31	9	5	15	2	908				
LOSS TOTAL AMOUNT	5133	1961	1802	1370	25223	5930	5880	13129	264	20	1040	258	82	664	36	31396				
LOSS OVER 10000	3	1	1	1	5	1	0	1	1	2	0	0	0	0	0	8				
TOTAL EXCESS	28513	9828	4936	13749	42133	1806	0	3228	10025	27080	0	0	0	0	0	70646				
P BODILY NO LAMYER NO.	43	0	18	25	281	3	16	254	4	4	14	0	1	11	2	338				
A INJURY LAWYER AV.-AMT.	3607	0	7381	869	515	100	674	520	68	309	5768	0	146	7319	53	11226				
Y MEDICAL	62	0	14	48	219	4	57	439	16	3	14	0	0	14	0	595				
M E MEDICAL	3625	0	4832	3273	1365	4173	1227	1368	1114	1097	1012	0	0	1012	0	1592				
N UNINSURED	167	84	72	11	610	342	257	4	0	7	21	12	9	0	0	798				
S MOTORISTS	284	273	282	388	195	193	175	369	0	944	268	105	485	0	0	216				
ADDITIONAL AMT.	0	0	0	0	5	4	1	0	0	0	0	0	0	0	0	5				
CONTRIBUTED	18919	0	2338	35500	1360	409	1033	1046	31500	1	0	0	0	1	0	3323				
																2105				

NEW YORK
TABLE A-3

PAUL 49

AUTOMOBILE CLAIM SURVEY-CLAIMS CLOSED BEFORE SURVEY
PRIVATE PASSENGER WITH BODILY INJURY AND MEDICAL-NEW YORK
TABLE A1
ACCIDENT TYPE

	-- ONE CAR IN STATE --										-- MULTI-CAR IN STATE --										-- OUT OF STATE --										GRAND TOTAL																	
	TOTAL DRIVER PASSEN					TOTAL DRIVER PASSEN					TOTAL DRIVER PASSEN					TOTAL DRIVER PASSEN					TOTAL DRIVER PASSEN					TOTAL DRIVER PASSEN					TOTAL DRIVER PASSEN					TOTAL DRIVER PASSEN												
	59	20	22	17	431	117	101	208	4	1	10	3	5	2	0	500	59	20	22	17	431	117	101	208	4	1	10	3	5	2	0	500	59	20	22	17	431	117	101	208	4	1	10	3	5	2	0	500
TOTAL NUMBER OF INJURIES	59	20	22	17	431	117	101	208	4	1	10	3	5	2	0	500	59	20	22	17	431	117	101	208	4	1	10	3	5	2	0	500	59	20	22	17	431	117	101	208	4	1	10	3	5	2	0	500
MEDICAL.	51	18	17	16	353	94	85	169	4	1	7	2	3	2	0	411	51	18	17	16	353	94	85	169	4	1	7	2	3	2	0	411	51	18	17	16	353	94	85	169	4	1	7	2	3	2	0	411
EXPENSE.	6	2	4	0	62	18	15	29	0	0	2	1	0	0	0	70	6	2	4	0	62	18	15	29	0	0	2	1	0	0	0	70	6	2	4	0	62	18	15	29	0	0	2	1	0	0	70	
AMT-UNKNOWN	281	244	259	347	365	644	423	189	40	10	679	2146	145	13	0	360	281	244	259	347	365	644	423	189	40	10	679	2146	145	13	0	360	281	244	259	347	365	644	423	189	40	10	679	2146	145	13	0	360
INCOME	14	4	3	7	105	22	11	71	0	1	2	1	1	0	1	121	14	4	3	7	105	22	11	71	0	1	2	1	1	0	1	121	14	4	3	7	105	22	11	71	0	1	2	1	0	1	121	
AMT-OUR KNOWN	14	7	7	0	98	35	24	39	0	0	2	1	1	0	0	114	14	7	7	0	98	35	24	39	0	0	2	1	1	0	0	114	14	7	7	0	98	35	24	39	0	0	2	1	0	0	114	
LOSS	67	9	241	25	23	22	14	25	0	1	27	49	4	0	0	28	67	9	241	25	23	22	14	25	0	1	27	49	4	0	28	67	9	241	25	23	22	14	25	0	1	27	49	4	0	28		
AMT-OUR UNKNOWN	58	103	51	76	162	261	139	137	0	112	155	165	0	30	0	133	58	103	51	76	162	261	139	137	0	112	155	165	0	30	0	133	58	103	51	76	162	261	139	137	0	112	155	165	0	30	0	133
PAID	1	0	0	1	2	0	0	2	0	0	0	0	0	0	0	3	1	0	0	1	2	0	0	2	0	0	0	0	0	0	0	3	1	0	0	1	2	0	0	2	0	0	0	0	3			
AMT-UNKNOWN	15	5	7	3	94	28	27	39	0	0	2	1	1	0	0	111	15	5	7	3	94	28	27	39	0	0	2	1	1	0	0	111	15	5	7	3	94	28	27	39	0	0	2	1	0	0	111	
AMT-UNKNOWN	54	0	0	54	270	0	0	270	0	0	0	0	0	0	0	198	54	0	0	54	270	0	0	270	0	0	0	0	0	0	0	198	54	0	0	54	270	0	0	270	0	0	0	0	0	198		
TRANS-	2	1	0	1	8	2	3	10	0	0	0	0	0	0	0	10	2	1	0	1	8	2	3	10	0	0	0	0	0	0	0	10	2	1	0	1	8	2	3	10	0	0	0	0	10			
PORTATION	17	6	7	4	93	27	28	38	0	0	2	1	1	0	0	112	17	6	7	4	93	27	28	38	0	0	2	1	1	0	0	112	17	6	7	4	93	27	28	38	0	0	2	1	0	0	112	
AMT-UNKNOWN	8	1	0	14	17	11	5	32	0	0	0	0	0	0	0	15	8	1	0	14	17	11	5	32	0	0	0	0	0	0	0	15	8	1	0	14	17	11	5	32	0	0	0	0	15			
AVERAGE AMOUNT	0	0	0	0	0	2	1	1	0	0	0	0	0	0	0	2	0	0	0	0	2	1	1	0	0	0	0	0	0	0	0	2	0	0	0	0	2	1	1	0	0	0	0	0	2			
FUNERAL	11	4	5	2	92	28	27	36	1	0	2	1	1	0	0	105	11	4	5	2	92	28	27	36	1	0	2	1	1	0	0	105	11	4	5	2	92	28	27	36	1	0	2	1	0	0	105	
AMT-UNKNOWN	0	0	0	0	1343	1612	1073	4	0	0	0	0	0	0	0	1343	0	0	0	0	1343	1612	1073	4	0	0	0	0	0	0	0	0	1343	0	0	0	0	1343	1612	1073	4	0	0	0	0	0	1343	
AVERAGE AMOUNT	2	0	0	2	6	1	1	4	0	0	0	0	0	0	0	2	2	0	0	6	1	1	4	0	0	0	0	0	0	0	0	2	2	0	0	6	1	1	4	0	0	0	0	0	2			
MISCELL-	15	6	6	3	105	29	29	47	0	0	2	1	1	0	0	122	15	6	6	3	105	29	29	47	0	0	2	1	1	0	0	122	15	6	6	3	105	29	29	47	0	0	2	1	0	0	122	
AMT-UNKNOWN	26	0	0	26	168	59	4	236	0	0	0	0	0	0	0	132	26	0	0	26	168	59	4	236	0	0	0	0	0	0	0	132	26	0	0	26	168	59	4	236	0	0	0	0	0	132		
AVERAGE AMOUNT	7	1	2	4	26	2	4	19	1	0	1	1	0	0	0	34	7	1	2	4	26	2	4	19	1	0	1	1	0	0	0	34	7	1	2	4	26	2	4	19	1	0	0	0	0	34		
OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
PERM. IMPAIR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
FACTORS. LOST	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
LIMB-SIGHT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
DEATH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
SCARRING	2	0	1	1	15	0	6	2	0	0	0	0	0	0	0	5	2	0	1	15	0	6	2	0	0	0	0	0	0	0	0	5	2	0	1	15	0	6	2	0	0	0	0	0	5			
LOSS OF CENSITRUM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
TOTAL TOTAL, IN THOUSANDS	23	5	10	8	188	80	40	68	0	0	0	0	0	0	0	17	23	5	10	8	188	80	40	68	0	0	0	0	0	0	0	17	23	5	10	8	188	80	40	68	0	0	0	0	0	17		
ECONOMIC LOSS UNDER 101	25	9	12	4	243	66	64	108	4	1	6	1	3	2	0	216	25	9	12	4	243	66	64	108	4	1	6	1	3	2	0	216	25	9	12	4	243	66	64	108	4	1	6	1	0	0	216	
TOTAL AMOUNT	707	364	133	210	7256	2250	1968	2851	161	26	132	1	90	42	0	8095	707	364	133	210	7256	2250	1968	2851	161	26	132	1	90	42	0	8095	707	364	133	210	7256	2250	1968	2851	161	26	132	1	0	0	8095	
LOSS OVER 10000	0	0	0	0	0	2	1	0	0	0	0	0	0	0	0	2	0	0	0	2	1	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2	1	0	0	0	0	0	0	0	2			
TOTAL EXCESS	0	0	0	0	41678	34664	7012	87	0	0	0	0	0	0	0	41678	0	0	0	0	41678	34664	7012	87	0	0	0	0	0	0	0	41678	0	0	0	0	41678	34664	7012	87	0	0	0	0	0	41678		
NO LAYWER NO.	7	0	4	3	106	1	16	87	1	1	2	0	0	2	0	115	7	0	4	3	106	1	16	87	1	1	2	0	0	2	0	115	7	0	4	3	106	1	16	87	1	0	0	2	0	115		
A INJURY	979	0	1140	764	435	25	310	471	68	75	32	0	0	32	0	461	979	0	1140	764	435	25	310	471	68	75	32	0	0	32	0	461	979	0	1140	764	435	25	3	0	0	0	0	32	0	461		
Y LAYWER	15	0	2	13	123	0	18	102	3	0	0	0	0	0	0	138	15	0	2	13	123	0	18	102	3	0	0	0	0	0	0	138	15	0	2	13	123	0	18	102	3	0	0	0	0	138		
AMT.	2378	0	2625	2340	1702	0	2956	1516	500	0	0	0	0	0	0	1776	2378	0	2625	234																												

AUTOMOBILE CLAIM SURVEY-CLAIMS CLOSED DURING SURVEY
PRIVATE PASSENGER WITH BOOILY INJURY AND MEDICAL-NEW YORK

NEW YORK

TABLE B1

AVERAGE MEDICAL COSTS AND CLAIMS

TABLE B-1

SIZE OF MEDICAL EXPENSE	AVERAGE MEDICAL			INDIVIDUAL HOSPITAL MEDICAL INSURANCE			GROUP HOSPITAL MEDICAL INSURANCE			STATUTORY DISABILITY			WELFARE			AV. DAYS INCUR		
	TOTAL	KNOW	UNKN	TOTAL	KNOW	UNKN	TOTAL	KNOW	UNKN	TOTAL	KNOW	UNKN	TOTAL	KNOW	UNKN	TOTAL	KNOW	UNKN
97	0	2	4	41	750	0	8	42	0	0	0	0	0	0	0	0	0	0
1-25	256	15	41	10	124	26	7	17	150	13	0	0	0	0	0	0	0	0
26-100	586	61	82	34	274	112	26	64	284	41	0	1	0	0	0	0	0	0
101-200	388	142	46	34	169	177	28	43	187	96	0	0	0	0	0	0	0	0
201-300	164	246	24	17	62	286	5	22	75	171	0	1	0	0	0	0	0	0
301-400	59	343	8	4	26	323	5	2	28	248	0	0	0	0	0	0	0	0
401-500	40	454	5	3	19	344	5	3	21	296	0	0	0	0	0	0	0	0
501-750	55	610	11	6	21	512	10	5	22	372	0	0	0	0	0	0	0	0
751-1000	37	863	7	1	14	674	1	5	14	500	0	0	0	0	0	0	0	0
1001-2500	49	1489	15	1	16	741	10	4	16	645	0	0	0	0	0	0	0	0
2501-5000	18	3670	4	1	5	1204	5	1	5	4283	0	0	0	0	0	0	0	0
5001-10000	5	7596	2	0	2	4010	0	1	3	0	0	0	0	0	0	0	0	0
10001-20000	4	11736	0	0	3	0	0	0	0	2	500	0	0	0	0	0	0	0
OVER 20000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	1758	263	247	115	776	265	103	175	849	388	0	2	1091	0	0	0	0	0
UNKNOWN AMT.	141	-4999	0	4	17	0	0	5	15	0	0	0	0	0	0	0	0	0

SIZE OF MEDICAL EXPENSE	WORKMEN'S COMPENSATION			MEDICARE			WELFARE			AV. DAYS INCUR		
	TOTAL	KNOW	UNKN	TOTAL	KNOW	UNKN	TOTAL	KNOW	UNKN	TOTAL	KNOW	UNKN
0	0	0	0	0	0	0	0	0	0	0	0	0
1-25	0	3	205	0	1	5	0	68	0	0	0	0
26-100	3	10	444	75	2	5	432	29	2	4	414	0
101-200	8	14	284	78	1	5	293	94	0	3	266	0
201-300	1	7	129	216	1	4	124	41	0	3	104	0
301-400	2	0	42	343	1	2	39	200	0	2	40	0
401-500	1	0	35	304	1	0	32	426	0	1	30	0
501-750	0	2	45	0	1	0	43	398	0	0	41	0
751-1000	1	1	20	927	1	2	22	921	0	1	19	0
1001-2500	0	0	35	0	0	3	30	0	0	0	31	0
2501-5000	0	0	15	0	1	2	12	2589	0	2	10	0
5001-10000	0	1	3	0	0	0	4	0	0	0	4	0
10001-20000	1	0	3	14642	0	0	3	0	1	0	2	0
OVER 20000	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	17	38	1332	1037	10	28	1298	473	5	20	1193	474
UNKNOWN AMT.	0	5	41	0	0	1	36	0	0	3	33	9

NEW YORK
TABLE C-1

	*WEEKLY WAGE 1-100				*WEEKLY WAGE 101-150				*W.			
	DAYS	AV.	SOURCE	RECOVERED	DAYS	AV.	SOURCE	RECOVERED	DAYS	AV.	SOURCE	RECOVERED
	LCST	AMOUNT	\$ KRN \$ UNK	ACT	LCST	AMOUNT	\$ KRN \$ UNK	ACT	LCST	AMOUNT	\$ KRN \$ UNK	ACT
DISABLED STAT-DISABILITY	410	79	0	38	207	0	314	132	0	23	228	0
WOKK-COMPENSATN	410	79	0	7	362	0	314	132	0	10	266	0
SOCIAL SECURITY	410	79	0	7	340	0	314	132	0	0	251	0
ANY STATUTORY	410	79	0	14	370	0	314	132	0	0	293	0
INDIV-DISABILITY	410	79	0	21	293	0	314	132	0	9	194	0
GROUP DISABILITY	410	79	0	25	266	0	314	132	2	20	184	175
WAGE CONTINUANCE	410	79	0	3	303	98	314	132	21	14	207	138
WELFARE	410	79	0	0	313	0	314	132	0	7	225	43
DISABLED STAT-DISABILITY	492	76	0	114	221	31	300	132	25	26	365	43
WOKK-COMPENSATN	492	76	0	24	382	0	300	132	0	28	403	0
SOCIAL SECURITY	492	76	0	0	382	0	300	132	0	0	417	0
ANY STATUTORY	492	76	0	14	359	31	300	132	25	0	443	43
INDIV-DISABILITY	492	76	0	8	333	0	300	132	43	14	310	78
GROUP DISABILITY	492	76	0	25	288	0	300	132	0	14	363	0
WAGE CONTINUANCE	492	76	0	35	280	118	300	132	47	14	355	158
WELFARE	492	76	0	0	379	0	300	132	0	0	375	0
DISABLED STAT-DISABILITY	1090	78	18	143	625	33	785	137	78	71	476	49
WOKK-COMPENSATN	1090	78	0	42	850	92	785	137	0	22	636	0
SOCIAL SECURITY	1090	78	0	0	780	0	785	137	0	0	580	0
ANY STATUTORY	1090	78	115	94	752	40	785	137	76	21	605	49
INDIV-DISABILITY	1090	78	21	45	669	9	785	137	0	26	530	0
GROUP DISABILITY	1090	78	20	68	626	20	785	137	69	43	418	78
WAGE CONTINUANCE	1090	78	83	24	780	85	785	137	45	22	441	71
WELFARE	1090	78	0	0	764	0	785	137	0	0	617	0
DISABLED STAT-DISABILITY	2509	73	279	371	1384	37	985	124	42	42	642	46
4-14 WOKK-COMPENSATN	2509	73	42	98	2035	233	985	124	195	0	636	39
SOCIAL SECURITY	2509	73	0	35	2105	0	985	124	0	0	782	0
ANY STATUTORY	2509	73	321	0	1955	63	985	124	237	0	594	40
INDIV-DISABILITY	2509	73	77	84	1786	3	985	124	0	71	753	0
GROUP DISABILITY	2509	73	0	119	1667	0	985	124	196	0	586	56
WAGE CONTINUANCE	2509	73	83	35	1966	71	985	124	166	0	525	58
WELFARE	2509	73	0	63	1871	0	985	124	0	0	751	0
DISABLED STAT-DISABILITY	441	78	322	0	119	38	54	130	112	0	630	52
44-27 WOKK-COMPENSATN	441	78	119	0	322	55	54	130	0	0	742	0
SOCIAL SECURITY	441	78	0	0	322	0	54	130	0	0	742	0
ANY STATUTORY	441	78	441	0	0	43	54	130	112	0	630	52
INDIV-DISABILITY	441	78	0	0	182	0	54	130	0	0	588	0
GROUP DISABILITY	441	78	0	0	182	0	54	130	0	0	588	0
WAGE CONTINUANCE	441	78	0	0	322	0	54	130	0	0	588	0
WELFARE	441	78	0	0	441	0	54	130	0	0	742	0

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INCOME AND INCOME RECOVERY BY LENGTH OF DISABILITY
 TABLE C-1
 CONTINUED

*WEEKLY WAGE 151-200										*WEEKLY WAGE 201-250										*WEEKLY WAGE 251-300										*WEEKLY WAGE 301-350										*WEEKLY WAGE 351-400										*WEEKLY WAGE 401-450										*WEEKLY WAGE 451-500										*WEEKLY WAGE 501-550										*WEEKLY WAGE 551-600										*WEEKLY WAGE 601-650										*WEEKLY WAGE 651-700										*WEEKLY WAGE 701-750										*WEEKLY WAGE 751-800										*WEEKLY WAGE 801-850										*WEEKLY WAGE 851-900										*WEEKLY WAGE 901-950										*WEEKLY WAGE 951-1000										*WEEKLY WAGE 1001-1050										*WEEKLY WAGE 1051-1100										*WEEKLY WAGE 1101-1150										*WEEKLY WAGE 1151-1200										*WEEKLY WAGE 1201-1250										*WEEKLY WAGE 1251-1300										*WEEKLY WAGE 1301-1350										*WEEKLY WAGE 1351-1400										*WEEKLY WAGE 1401-1450										*WEEKLY WAGE 1451-1500										*WEEKLY WAGE 1501-1550										*WEEKLY WAGE 1551-1600										*WEEKLY WAGE 1601-1650										*WEEKLY WAGE 1651-1700										*WEEKLY WAGE 1701-1750										*WEEKLY WAGE 1751-1800										*WEEKLY WAGE 1801-1850										*WEEKLY WAGE 1851-1900										*WEEKLY WAGE 1901-1950										*WEEKLY WAGE 1951-2000										*WEEKLY WAGE 2001-2050										*WEEKLY WAGE 2051-2100										*WEEKLY WAGE 2101-2150										*WEEKLY WAGE 2151-2200										*WEEKLY WAGE 2201-2250										*WEEKLY WAGE 2251-2300										*WEEKLY WAGE 2301-2350										*WEEKLY WAGE 2351-2400										*WEEKLY WAGE 2401-2450										*WEEKLY WAGE 2451-2500										*WEEKLY WAGE 2501-2550										*WEEKLY WAGE 2551-2600										*WEEKLY WAGE 2601-2650										*WEEKLY WAGE 2651-2700										*WEEKLY WAGE 2701-2750										*WEEKLY WAGE 2751-2800										*WEEKLY WAGE 2801-2850										*WEEKLY WAGE 2851-2900										*WEEKLY WAGE 2901-2950										*WEEKLY WAGE 2951-3000										*WEEKLY WAGE 3001-3050										*WEEKLY WAGE 3051-3100										*WEEKLY WAGE 3101-3150										*WEEKLY WAGE 3151-3200										*WEEKLY WAGE 3201-3250										*WEEKLY WAGE 3251-3300										*WEEKLY WAGE 3301-3350										*WEEKLY WAGE 3351-3400										*WEEKLY WAGE 3401-3450										*WEEKLY WAGE 3451-3500										*WEEKLY WAGE 3501-3550										*WEEKLY WAGE 3551-3600										*WEEKLY WAGE 3601-3650										*WEEKLY WAGE 3651-3700										*WEEKLY WAGE 3701-3750										*WEEKLY WAGE 3751-3800										*WEEKLY WAGE 3801-3850										*WEEKLY WAGE 3851-3900										*WEEKLY WAGE 3901-3950										*WEEKLY WAGE 3951-4000										*WEEKLY WAGE 4001-4050										*WEEKLY WAGE 4051-4100										*WEEKLY WAGE 4101-4150										*WEEKLY WAGE 4151-4200										*WEEKLY WAGE 4201-4250										*WEEKLY WAGE 4251-4300										*WEEKLY WAGE 4301-4350										*WEEKLY WAGE 4351-4400										*WEEKLY WAGE 4401-4450										*WEEKLY WAGE 4451-4500										*WEEKLY WAGE 4501-4550										*WEEKLY WAGE 4551-4600										*WEEKLY WAGE 4601-4650										*WEEKLY WAGE 4651-4700										*WEEKLY WAGE 4701-4750										*WEEKLY WAGE 4751-4800										*WEEKLY WAGE 4801-4850										*WEEKLY WAGE 4851-4900										*WEEKLY WAGE 4901-4950										*WEEKLY WAGE 4951-5000										*WEEKLY WAGE 5001-5050										*WEEKLY WAGE 5051-5100										*WEEKLY WAGE 5101-5150										*WEEKLY WAGE 5151-5200										*WEEKLY WAGE 5201-5250										*WEEKLY WAGE 5251-5300										*WEEKLY WAGE 5301-5350										*WEEKLY WAGE 5351-5400										*WEEKLY WAGE 5401-5450										*WEEKLY WAGE 5451-5500										*WEEKLY WAGE 5501-5550										*WEEKLY WAGE 5551-5600										*WEEKLY WAGE 5601-5650										*WEEKLY WAGE 5651-5700										*WEEKLY WAGE 5701-5750										*WEEKLY WAGE 5751-5800										*WEEKLY WAGE 5801-5850										*WEEKLY WAGE 5851-5900										*WEEKLY WAGE 5901-5950										*WEEKLY WAGE 5951-6000										*
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AUTOMOBILE CLAIM SURVEY-CLOSURE DURING SURVEY
PRIVATE PASSENGER WITH PHYSICAL INJURY AND MEDICAL-NEW YORK
TABLE C1
INCOME AND INCOME RECOVERY BY LENGTH OF DISABILITY

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NEW YORK

TABLE C-1

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*WEEKLY WAGE 251-300										*WEEKLY WAGE 301-350										*WEEKLY WAGE 351-400										*WEEKLY WAGE 401-450										*WEEKLY WAGE 451-500										*WEEKLY WAGE 501-550										*WEEKLY WAGE 551-600										*WEEKLY WAGE 601-650										*WEEKLY WAGE 651-700										*WEEKLY WAGE 701-750										*WEEKLY WAGE 751-800										*WEEKLY WAGE 801-850										*WEEKLY WAGE 851-900										*WEEKLY WAGE 901-950										*WEEKLY WAGE 951-1000										*WEEKLY WAGE 1001-1050										*WEEKLY WAGE 1051-1100										*WEEKLY WAGE 1101-1150										*WEEKLY WAGE 1151-1200										*WEEKLY WAGE 1201-1250										*WEEKLY WAGE 1251-1300										*WEEKLY WAGE 1301-1350										*WEEKLY WAGE 1351-1400										*WEEKLY WAGE 1401-1450										*WEEKLY WAGE 1451-1500										*WEEKLY WAGE 1501-1550										*WEEKLY WAGE 1551-1600										*WEEKLY WAGE 1601-1650										*WEEKLY WAGE 1651-1700										*WEEKLY WAGE 1701-1750										*WEEKLY WAGE 1751-1800										*WEEKLY WAGE 1801-1850										*WEEKLY WAGE 1851-1900										*WEEKLY WAGE 1901-1950										*WEEKLY WAGE 1951-2000										*WEEKLY WAGE 2001-2050										*WEEKLY WAGE 2051-2100										*WEEKLY WAGE 2101-2150										*WEEKLY WAGE 2151-2200										*WEEKLY WAGE 2201-2250										*WEEKLY WAGE 2251-2300										*WEEKLY WAGE 2301-2350										*WEEKLY WAGE 2351-2400										*WEEKLY WAGE 2401-2450										*WEEKLY WAGE 2451-2500										*WEEKLY WAGE 2501-2550										*WEEKLY WAGE 2551-2600										*WEEKLY WAGE 2601-2650										*WEEKLY WAGE 2651-2700										*WEEKLY WAGE 2701-2750										*WEEKLY WAGE 2751-2800										*WEEKLY WAGE 2801-2850										*WEEKLY WAGE 2851-2900										*WEEKLY WAGE 2901-2950										*WEEKLY WAGE 2951-3000										*WEEKLY WAGE 3001-3050										*WEEKLY WAGE 3051-3100										*WEEKLY WAGE 3101-3150										*WEEKLY WAGE 3151-3200										*WEEKLY WAGE 3201-3250										*WEEKLY WAGE 3251-3300										*WEEKLY WAGE 3301-3350										*WEEKLY WAGE 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	*WEEKLY WAGE 1-100				*WEEKLY WAGE 101-150				*WEEKLY WAGE 151-200				*WEEKLY WAGE 201-250				*WEEKLY WAGE 251-300				*WEEKLY WAGE 301-350				*WEEKLY WAGE 351-400				*WEEKLY WAGE 401-450				*WEEKLY WAGE 451-500				*WEEKLY WAGE 501-550				*WEEKLY WAGE 551-600				*WEEKLY WAGE 601-650				*WEEKLY WAGE 651-700				*WEEKLY WAGE 701-750				*WEEKLY WAGE 751-800				*WEEKLY WAGE 801-850				*WEEKLY WAGE 851-900				*WEEKLY WAGE 901-950				*WEEKLY WAGE 951-1000																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.	DAYS	AV.	RECOVERED	AV.

AUTOMOBILE CLAIM SURVEY--CLAIMS CLOSED DURING SURVEY
PRIVATE PASSENGER WITH BODILY INJURY AND MEDICAL-NEW YORK
TABLE C1
NEW YORK
INCOME AND INCOME RECOVERY BY LENGTH OF DISABILITY
TABLE C-1

PAGE 137

	*WEEKLY WAGE 151-200				*WEEKLY WAGE 201-250				CONTINUED			
	DAYS LCST	AV. AMOUNT	SOURCE AVAIL. \$ KRN \$ UNK NCT	RECOVERED DAYS AV. AMOUNT	DAYS LCST	AV. AMOUNT	SOURCE AVAIL. \$ KRN \$ UNK NCT	RECOVERED DAYS AV. AMOUNT	DAYS LCST	AV. AMOUNT	SOURCE AVAIL. \$ KRN \$ UNK NCT	RECOVERED DAYS AV. AMOUNT
DISABLED STAT. DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
27-52 WK WORK-COMPENSATN	0	0	0	0	0	0	0	0	0	0	0	0
SOCIAL SECURITY	0	0	0	0	0	0	0	0	0	0	0	0
ANY STATUTORY	0	0	0	0	0	0	0	0	0	0	0	0
INDIV. DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
GROUP DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
WAGE CONTINUANCE	0	0	0	0	0	0	0	0	0	0	0	0
WELFARE	0	0	0	0	0	0	0	0	0	0	0	0
DISABLED STAT. DISABILITY	1467	177	0	0	0	0	0	0	0	0	0	0
OVER 52 WK WORK-COMPENSATN	1467	177	375	0	1467	0	0	0	0	0	0	0
SOCIAL SECURITY	1467	177	0	0	1467	60	0	0	0	0	0	0
ANY STATUTORY	1467	177	375	0	1467	60	0	0	0	0	0	0
INDIV. DISABILITY	1467	177	0	0	1092	0	0	0	0	0	0	0
GROUP DISABILITY	1467	177	0	0	1092	0	0	0	0	0	0	0
WAGE CONTINUANCE	1467	177	0	0	1092	0	0	0	0	0	0	0
WELFARE	1467	177	0	0	1092	0	0	0	0	0	0	0
PERMANENT STAT. DISABILITY	693	185	0	0	0	0	0	0	0	0	0	0
DISABILITY WORK-COMPENSA	693	185	0	0	693	0	0	0	0	0	0	0
SOCIAL SECURITY	693	185	0	0	693	0	0	0	0	0	0	0
ANY STATUTORY	693	185	0	0	693	0	0	0	0	0	0	0
INDIV. DISABILITY	693	185	0	0	693	0	0	0	0	0	0	0
GROUP DISABILITY	693	185	0	0	693	0	0	0	0	0	0	0
WAGE CONTINUANCE	693	185	0	0	693	0	0	0	0	0	0	0
WELFARE	693	185	0	693	0	0	0	0	0	0	0	0
PERMANENT STAT. DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
DISABILITY WORK-COMPENSA	0	0	0	0	0	0	0	0	0	0	0	0
AND SOCIAL SECURITY	0	0	0	0	0	0	0	0	0	0	0	0
ANY STATUTORY	0	0	0	0	0	0	0	0	0	0	0	0
INDIV. DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
GROUP DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
WAGE CONTINUANCE	0	0	0	0	0	0	0	0	0	0	0	0
WELFARE	0	0	0	0	0	0	0	0	0	0	0	0

AUTOMOBILE CLAIM SURVEY-CLAIMS CLOSED DURING SURVEY
PRIVATE PASSENGER WITH BOILY INJURY AND MEDICAL-NEW YORK
DATE 133
NEW YORK
TABLE C-1
INCOME AND INCOME RECOVERY BY LENGTH OF DISABILITY

TABLE C-1

CONTINUED

	*WEEKLY WAGE 251-300				*WEEKLY WAGE OVER 300				AV.			
	DAYS LAST	AV. AMOUNT	AV. SOURCE	RECOVERED DAYS	NOT AV	DAYS LAST	AV. AMOUNT	AV. SOURCE	RECOVERED DAYS	NOT AV	AV. RECOVERED	AV. AMOUNT
DISABLED STAT-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
27-52 WK WORK-COMPENSATN	0	0	0	0	0	0	0	0	0	0	0	0
SOCIAL SECURITY	0	0	0	0	0	0	0	0	0	0	0	0
ANY STATUTORY	0	0	0	0	0	0	0	0	0	0	0	0
INDIV-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
GROUP-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
WAGE CONTINUANCE	0	0	0	0	0	0	0	0	0	0	0	0
WELFARE	0	0	0	0	0	0	0	0	0	0	0	0
DISABLED STAT-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
OVER 52 WK WORK-COMPENSATN	0	0	0	0	0	0	0	0	0	0	0	0
SOCIAL SECURITY	0	0	0	0	0	0	0	0	0	0	0	0
ANY STATUTORY	0	0	0	0	0	0	0	0	0	0	0	0
INDIV-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
GROUP-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
WAGE CONTINUANCE	0	0	0	0	0	0	0	0	0	0	0	0
WELFARE	0	0	0	0	0	0	0	0	0	0	0	0
PERMANENT STAT-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
DISABILITY WORK-COMPENSA	0	0	0	0	0	0	0	0	0	0	0	0
SOCIAL SECURITY	0	0	0	0	0	0	0	0	0	0	0	0
ANY STATUTORY	0	0	0	0	0	0	0	0	0	0	0	0
INDIV-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
GROUP-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
WAGE CONTINUANCE	0	0	0	0	0	0	0	0	0	0	0	0
WELFARE	0	0	0	0	0	0	0	0	0	0	0	0
PERMANENT STAT-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
DISABILITY WORK-COMPENSA	0	0	0	0	0	0	0	0	0	0	0	0
SOCIAL SECURITY	0	0	0	0	0	0	0	0	0	0	0	0
ANY STATUTORY	0	0	0	0	0	0	0	0	0	0	0	0
INDIV-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
GROUP-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
WAGE CONTINUANCE	0	0	0	0	0	0	0	0	0	0	0	0
WELFARE	0	0	0	0	0	0	0	0	0	0	0	0
PERMANENT STAT-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
DISABILITY WORK-COMPENSA	0	0	0	0	0	0	0	0	0	0	0	0
AND SOCIAL SECURITY	0	0	0	0	0	0	0	0	0	0	0	0
ANY STATUTORY	0	0	0	0	0	0	0	0	0	0	0	0
INDIV-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
GROUP-DISABILITY	0	0	0	0	0	0	0	0	0	0	0	0
WAGE CONTINUANCE	0	0	0	0	0	0	0	0	0	0	0	0
WELFARE	0	0	0	0	0	0	0	0	0	0	0	0

AUTOMOBILE CLAIM STUDY-FULL DATA-CLAIMS CLOSED DURING SURVEY
TABLE D-DAMAGE TO PROPERTY
PRIVATE PASSENGER WITH PROPERTY DAMAGE LIABILITY ONLY-NEW YORK

PAGE 11
NEW YORK

TABLE D-1

	SETTLEMENT AMOUNT		LAWYER		TOTAL		TO ANOTHER INSURANCE CO.		AMOUNT FROM OTHER SOURCES		UNK. AV. AMT.		ZERO		UNK. AV. AMT.		ZERO	
	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST
ONE CAR	6	378	0	0	0	0	6	378	0	0	5	1	0	0	5	1	0	0
IN STATE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MULTI-	65	183	8	355	73	202	1	75	1	261	0	0	0	0	0	0	0	0
CAR IN	40	191	6	111	52	173	7	45	8	303	1	51	6	250	1	0	0	0
STATE	1	28	2	112	3	84	0	5	0	0	0	5	0	0	0	0	0	0
CONTENTS NO PLAN	1048	235	164	268	1212	240	158	1190	96	357	16	1323	105	18	0	0	0	0
CONTENTS NO PLAN	18	369	4	223	22	359	8	22	0	391	0	0	0	0	0	0	0	0
OTHER PROPERTY	16	161	1	250	17	166	2	15	0	157	1	16	0	0	0	0	0	0
POLICYHOLDER	2	307	0	0	2	307	0	0	0	0	0	0	0	0	0	0	0	0
CONTENTS IN CAR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER CAR/CONTENTS	33	258	0	0	33	258	5	27	5	251	0	33	4	0	0	0	0	0
POLICYHOLDER	1	63	0	0	1	63	0	1	0	0	0	1	0	0	0	0	0	0
OTHER CAR/CONTENTS	54	206	6	111	60	198	7	52	9	303	1	59	9	250	0	0	0	0
POLICYHOLDER	1182	234	179	269	1361	239	174	1335	102	352	17	1484	110	172	0	0	0	0
ALL OTHERS																		

	DEDUCTIBLE		COST OF REPAIR OR REPLACEMENT		LOSS OF USE VALUE		UNK. AV. AMT.		ZERO		UNK. AV. AMT.		ZERO		UNK. AV. AMT.		ZERO	
	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST
ONE CAR	5	1	0	60	6	0	0	428	0	0	5	1	0	0	0	0	0	0
IN STATE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MULTI-	0	76	1	0	71	4	2	208	0	75	2	0	0	0	0	0	0	0
CAR IN	13	40	7	69	53	4	3	201	0	51	9	0	0	0	0	0	0	0
STATE	0	5	0	0	4	1	0	91	0	5	0	0	0	0	0	0	0	0
CONTENTS NO PLAN	34	1269	141	175	1299	77	68	252	18	1300	126	71	0	0	0	0	0	0
CONTENTS NO PLAN	2	27	1	525	26	2	2	367	2	28	0	168	0	0	0	0	0	0
OTHER PROPERTY	1	16	0	50	17	0	0	174	0	17	0	0	0	0	0	0	0	0
POLICYHOLDER	2	0	0	75	2	0	0	382	0	2	0	0	0	0	0	0	0	0
CONTENTS IN CAR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER CAR/CONTENTS	2	31	4	100	35	2	0	325	2	31	4	47	0	0	0	0	0	0
POLICYHOLDER	0	1	0	0	1	0	0	63	0	1	0	0	0	0	0	0	0	0
OTHER CAR/CONTENTS	20	41	7	68	61	4	3	229	0	56	10	0	0	0	0	0	0	0
POLICYHOLDER	39	1425	147	186	1453	86	72	252	22	1457	132	78	0	0	0	0	0	0
ALL OTHERS																		

AUTOMOBILE CLAIM STUDY-FULL DATA-CLAIMS CLOSED DURING SURVEY PAGE 43
TABLE D-DAMAGE TO PROPERTY NEW YORK
PRIVATE PASSENGER WITH PROPERTY DAMAGE AND COLLISION-NEW YORK
TABLE D-3

	SETTLEMENT AMOUNT			TOTAL			TO ANOTHER			AMOUNT FROM		
	NO. LAYERS	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST	NO.	AV. COST
ONE CAR	307	381	0	0	307	381	0	286	23	0	3	283
IN STATE	0	0	0	0	0	0	0	0	0	0	0	0
CONTENTS IN CAR	38	204	2	228	40	206	2	36	2	74	0	37
OTHER PROPERTY	1129	339	3	496	1132	339	2	1082	67	121	9	1090
MULTI-CAR IN STATE	4	71	1	100	5	77	0	4	1	0	0	5
CONTENTS IN CAR	621	201	42	262	663	205	54	657	60	400	7	704
OTHER PROPERTY	14	214	1	327	15	221	3	13	1	396	0	15
OUT OF STATE	7	180	0	0	7	180	0	8	0	0	1	7
POLICYHOLDER	46	363	0	0	46	363	0	43	3	0	1	42
CONTENTS IN CAR	0	0	0	0	0	0	0	0	0	0	0	0
OTHER PROPERTY	14	282	1	750	15	295	1	17	0	472	0	18
MULTI-CAR IN STATE	2	138	0	0	2	138	0	2	0	0	0	2
CONTENTS IN CAR	1482	348	3	496	1485	348	2	1412	93	121	13	1405
OTHER PROPERTY	700	202	47	269	747	206	60	737	64	390	8	788
ALL OTHERS												

	DEDUCTIBLE			COST OF REPAIR OR REPLACEMENT			LOSS OF USE			VALUE		
	\$ KMM	ZERO	\$ KMM	\$ KMM	ZERO	\$ KMM	\$ KMM	ZERO	\$ KMM	\$ KMM	ZERO	\$ KMM
ONE CAR	293	15	1	72	307	2	0	454	1	280	28	82
IN STATE	0	0	0	0	0	0	0	0	0	0	0	0
CONTENTS IN CAR	8	29	3	69	40	0	0	226	0	37	3	0
OTHER PROPERTY	1110	30	4	67	1197	2	3	404	1	1087	64	25
MULTI-CAR IN STATE	0	5	0	0	5	0	0	117	0	5	0	0
CONTENTS IN CAR	45	439	67	62	714	27	30	217	37	679	75	101
OTHER PROPERTY	1	14	2	100	16	1	0	231	0	15	2	0
OUT OF STATE	1	7	0	20	7	1	0	189	1	7	0	70
POLICYHOLDER	46	0	0	50	46	0	0	430	0	44	2	0
CONTENTS IN CAR	0	0	0	0	0	0	0	0	0	0	0	0
OTHER PROPERTY	3	15	0	93	15	3	0	327	1	14	1	25
MULTI-CAR IN STATE	1	1	0	50	2	0	0	163	2	2	0	0
CONTENTS IN CAR	1457	45	5	66	1500	4	3	415	2	1411	94	54
OTHER PROPERTY	59	710	92	64	799	32	30	219	19	781	81	94
ALL OTHERS												

AUTOMOBILE CLAIMS SURVEY-FULL DATA-CLOSED DURING+BEFORE SURVEY
PRIVATE PASSENGER WITH BOOILY INJURY CLOS-D-NEW YORK

TABLE F

RATIO OF B.I.SETTLEMENT TO ECONOMIC LOSS BY ECONOMIC LOSS

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NEW YORK

TABLE F-2
CONTINUED

		RATIO OF BOOILY INJURY SETTLEMENT TO ECONOMIC LOSS			1.0 TO 1.5			UNDER 1.0		
		2.2 TO 2.5			1.5 TO 2.0			TOTAL AV.AMT.		
		NO.	TOTAL AV.AMT.	NO.	TOTAL AV.AMT.	NO.	TOTAL AV.AMT.	NO.	TOTAL AV.AMT.	NO.
TOTAL	0	0	0	0	0	0	0	0	0	0
ECONOMIC	1-100	29	3686	127	2546	0	0	39	3798	0
LOSS-	101-200	20	6877	344	12	3952	329	42	10923	260
EXCLUDING	201-300	15	8925	595	14	7401	525	29	12955	447
DEATHS	301-400	12	9225	769	8	6078	760	17	11000	647
	401-500	12	12755	1063	11	10039	913	10	7560	796
	501-750	10	13829	1383	4	5016	1254	21	23003	1095
	751-1000	5	10500	2100	3	5850	1950	8	11837	1480
	1001-1500	6	16562	2760	4	10800	2700	13	28393	2184
	1501-2000	1	3500	3500	3	11555	3852	6	18148	3025
	2001-2500	1	5500	5500	1	5000	5000	4	15896	1974
	2501-3000	2	11833	5917	0	0	0	2	9298	4649
	3001-3500	2	16000	8000	0	0	0	2	12350	6175
	3501-4000	1	7500	7500	0	0	0	1	6987	6987
	4001-4500	1	10268	10268	0	0	0	1	6725	6725
	4501-5000	0	0	0	1	10000	10000	0	0	0
	5001-6000	0	0	0	0	0	0	1	9500	9500
	6001-7000	0	0	0	1	13225	13225	2	19250	9625
	7001-8000	0	0	0	0	0	0	0	0	0
	8000-9000	0	0	0	0	0	0	1	17500	17500
	9000-10000	0	0	0	0	0	0	0	0	0
	10001-15000	0	0	0	0	0	0	0	1	10000
	15001-20000	0	0	0	0	0	0	0	1	13247
	20001-25000	0	0	0	0	0	0	0	0	0
	OVER 25000	0	0	0	0	0	0	0	0	0
SUB-TOTAL		116	129460	1116	90	98962	1100	200	258023	1290
ECONOMIC LOSS UNKNOWN		2	1900	950	3	400	200	12	2589	256
TOTAL-EXCLUDING DEATH		118	131360	1113	93	99562	1071	212	261092	1232
DEATH		3	11300	3767	0	0	0	1	3500	3500

PAGE 75 NEW YORK
TABLE F-2
CONTINUED

AUTOMOBILE CLAIMS SURVEY-FULL DATA-CLOSED DURING+BEFORE SURVEY
PRIVATE PASSENGER WITH BODILY INJURY CLOSED-NEW YORK
TABLE F
RATIO OF B.I.-SETTLEMENT TO ECONOMIC LOSS BY ECONOMIC LOSS

TOTAL ECONOMIC LOSS- EXCLUDING DEATHS	BODILY INJURY SETTLEMENT GREATER THAN ZERO NO.	TOTAL AV. AMT.	NO.	EXCESS	MEDICAL EXPENSE TOTAL	NO.	INCOME LOSS TOTAL	OTHER EXPENSE TOTAL	NO.	TOTAL	B.I.-SETTLEMENT IS ZERO TOTAL - - - - -		
											MEDICAL	INCOME	OTHER
											EXPENSE	LOSS	LOSS
43	3482	81	0	0	0	0	0	0	0	0	52	0	0
803	195934	244	0	0	788	32521	131	4336	33	595	45	1487	329
101-200	420	255012	607	0	417	45923	179	13339	39	1863	18	1855	577
201-300	239	214130	896	0	239	36667	158	21678	18	1416	8	1348	583
301-400	141	158719	1126	0	141	27152	107	20958	13	641	4	841	600
401-500	122	170294	1396	0	122	27153	98	26024	12	1598	7	1481	1696
501-750	167	279772	1675	0	166	46173	138	54335	19	1946	6	1927	1655
751-1000	76	180020	2369	0	76	31567	43	32086	12	2363	3	2370	400
1001-1500	74	253256	3422	1	73	49568	53	32238	17	4183	2	1615	1172
1501-2000	39	140527	3603	0	39	34558	33	35125	4	993	1	2100	360
2001-2500	23	139709	6074	4	23	25019	18	25477	4	1299	1	1768	0
2501-3000	12	65781	5482	1	12	18488	10	15616	4	1768	0	0	0
3001-3500	15	74359	4957	0	15	22756	11	24142	5	1453	1	3244	0
3501-4000	8	54087	6761	1	8	15214	7	13135	2	992	0	0	0
4001-4500	4	38593	9648	2	5868	4	8531	3	7998	1	720	2	1163
4501-5000	5	38700	7740	1	6500	5	12502	4	11516	0	0	0	0
5001-6000	4	31098	7775	1	7499	4	7972	4	13482	1	80	0	0
6001-7000	6	71975	11996	2	13225	6	17832	6	20151	2	764	0	0
7001-8000	5	112448	22490	2	79748	5	15996	4	12944	2	8418	0	0
8000-9000	1	17500	17500	1	17500	1	8850	0	0	0	1	2500	0
9000-10000	2	12000	6000	0	2	18130	0	0	0	0	0	0	0
10001-15000	6	243675	40613	4	192875	5	44932	4	26124	1	2850	0	0
15001-20000	1	32500	32500	1	22500	1	17012	0	0	0	0	0	0
20001-25000	2	22500	11250	1	10000	2	24767	2	19007	0	0	0	0
OVER 25000	0	0	0	0	0	0	0	0	0	0	0	0	0
SUB-TOTAL	22182806071	1265	22	371835	2154	582538	1033	432709	189	33882	150	21931	20872
ECONOMIC LOSS UNKNOWN	346	239917	693	0	260	66938	4	274	19	2447	210	6739	70
TOTAL-EXCLUDING DEATH	25643045988	1188	22	371835	2414	649476	1037	432983	208	36329	360	28670	20942
DEATH	21	184867	8803	2	62500	17	17422	4	29313	17	19797	1	498
													1603

Mr. Moss. The next witness would be Mr. W. James Kronzer, Jr., of Houston, Tex.

STATEMENT OF W. JAMES KRONZER, JR., TEXAS TRIAL LAWYERS ASSOCIATION

Mr. KRONZER. Mr. Chairman, members of the committee, before starting this effort, I think it would be appropriate if I made three statements: The first is the appreciation that I have to the committee, and the Chair, for permitting me to speak on such short notice.

I also learned from yesterday's hearing that I had better be a little chary in discussing the DOT reports and H.R. 7514. I trust the Chair and each member of the committee will realize throughout that I hold the committee, the Congress, and the DOT in full and complete respect; and I do not challenge their integrity, although it might appear I am "bearding the lion."

Third, it is difficult for a lawyer, a courthouse lawyer, to speak from a seated position. Some say this is a condition of trial lawyers because their brains are in the lower portion of their anatomy. However, I will undertake to do my best here today.

I have not heretofore been able to furnish the committee with a statement on such short notice and I again apologize for that.

My appearance here today is as a representative of the Texas Trial Lawyers Association.

My name, as the committee records now show, is Jim Kronzer. I practice law in Houston with 12 other lawyers in our firm. We are predominantly on what is known as the plaintiff's side of the docket and, I suppose, one of the group of people about which so much has been said before, and I assume will be said after I depart.

I couldn't help but think yesterday when we were discussing the Massachusetts plan that it seems that we have a reversion to the days of John Alden, because, as I think perhaps the committee knows, it was against the law to practice law in the Massachusetts Bay Colony, and that seems about where we are headed again.

My personal biography has been delivered to Mr. Guthrie and I won't do any further huffing and puffing with respect to that.

My purpose is to oppose H.R. 7514 on behalf of the Texas trial lawyers and all similarly drawn proposals for a nonfault system with drastically limited benefits, and to briefly present and explain the March 11, 1971, "Report and Recommendations of the Special Committee on Automobile Accident Reparations" of the American College of Trial Lawyers.

At the outset I should make two things clear. One is that we in Texas keenly appreciate the efforts of the Congress and the Department of Transportation, for without these herculean efforts to clean the "Augean Stables" we would still be confronted with an archaic pure contributory negligence system, with an inordinately complicated system of submitting causes to juries, and a unanimous jury verdict requirement.

There is now on our Governor's desk a bill which has passed both houses of our legislature which has laid these ghosts to rest. Other vital legislation intended to remove further crustaceans from the system is moving in the same direction in our legislature. Without the impetus of these studies and actions, this simply could not have happened.

You will perhaps permit me one aside, and that is that Aetna and other major stock companies are in full opposition, as they have always been. We trust that our Governor will sniff the winds and tides of change and sign the bill forthwith, and we believe he will.

In that regard, if the Chair will permit me to supplement my remarks with testimony, 4 months earlier than the testimony of Mr. Markus, referring to Professor Denenberg's remarks, he wrote an article for the Insurance Law Journal in the August 1970 issue. At that time he was not the commissioner of insurance. He spoke himself of this transition. At that time he described no-fault in this manner:

Yet, no-fault is a kind of palliative, a form of tinkering. What is needed is a comprehensive and detailed program of loss prevention, and control of improvement in our judicial machinery and of fundamental re-examination of our total automobile environment.

At that time, speaking to the issue of pain and suffering and general damages, Professor Denenberg had this to say:

The argument over pain and suffering is an old story. Many of the arguments against it are totally unconvincing. For example, some argue that it is difficult to compute, so we don't compute it and we won't compensate for it.

Still another example, from the Rockefeller report: "For purposes of using money to compensate accident victims for loss has to be first and foremost non-economic or economic loss."

Why loss is economic loss is not explained, nor does the report explain why economic loss must be foremost. Our value system has never so emphasized economic losses at the expense of noneconomic losses, and there is no reason given to start doing so now.

The major argument that will probably be made against compensation for pain and suffering will likely be one of the prime priorities. Our resources are limited and we cannot afford to squander money in the expensive process of determining pain and suffering when we are not even compensating for economic loss.

So I say since he had some transitional attitudes toward the role of the lawyer in the tort system, I would have felt remiss in the defense of our calling had I not made that known to his position some 4 months before he was given his present position.

Back to my prepared statement, if I might.

A second and most important matter relates to the DOT studies themselves. I have not read them in their entirety—though I have rather carefully examined the Volpe summary of March 1971—but since we do not basically quarrel with the truism that the "fault" system needs overhauling I will assume the correctness of the statistical results. We do strongly question, however, the conclusion that H.R. 7514 is the logical progeny of the studies or that substantial justice will be done if this proposal, or one similar to it, is the order of the day.

It is hoped that the subcommittee will fully understand that no claimant's lawyer can or does validly oppose a no-fault system that fully compensates the injured party for all of his true losses. Superadded to this, certainly he cannot oppose such a system, even though he may be totally excluded from participation, if it really delivers full compensation to the injured person or a decedent's beneficiaries.

But who is prepared for or can deliver such a system? Certainly not the insurance industry. Even if the industry is willing, the public is not. And why is that? Simply because no healthy person ever visualizes that he will be involved in the carnage of 55,000 deaths and 3,500,000 injured every year when he is asked to pay his premium. Do you? And who among us would say that a claimant, effectively denied the right

of counsel, can deal fairly and at arms' length with a trained insurance company representative.

So what have been the conclusions of the DOT and Secretary Volpe? They are to rid the automobile reparations system of the lawyer and provide limited benefits not to exceed the present cost of insurance. Let us see if these are the "lemon conclusions" drawn from the "apple statistics."

As to attorneys, the Volpe report of March 1971 states: "The goal of the system should be that no recovery for any loss, of a type covered by the applicable coverage, would be permitted in any private action for damages." (P. 136.)

Again, on page 143, as an expected result, we find the statement that "The large share of settlements now going to plaintiffs' lawyers would be eliminated." Nor does H.R. 7514 leave any doubt as to our role. Section 8 provides that a reasonable sum for attorneys' fee may be allowed in any case in which the insurer denies all or part of a claim for benefits under such policy. No attorney in his senses would accept employment under such circumstances, and if it is meant that this is additional compensation that may be obtained under these limited circumstances, then you have solved nothing with respect to the cost of counsel.

Thus, since it is an avowed purpose of the DOT studies and H.R. 7514 to rid the system of the lawyers, the subcommittee hopefully will indulge our criticism of such attempts to rearrange the distribution of the premium dollar among the innocent and guilty victims (Volpe, p. 116) without our participation. That is not the gravamen of the DOT suggestions that there will be a larger pie to cut up is made clear by this statement in the Volpe report: "The public should be able to take this step with some confidence that, overall, insurance costs will not rise because of it." (P. 141.) We would certainly agree that H.R. 7514 would not increase such costs. That being true, and there being no anticipated substantial reduction in the insurers' acquisition and administrative costs, the elimination of the lawyers won't increase the size of the pieces of the pie taken by the innocent because the guilty will now also share.

Before discussing H.R. 7514 more specifically, may I place in the record a copy of the "American College of Trial Lawyers Report," copies which I have already furnished before I can make the attachment.

Mr. Moss. I believe in keeping with the practice of yesterday, that I will receive it for the committee records rather than for the transcript of the hearings at this point, and it will be available to the members. There is no point in reprinting it as part of these hearings.

If there is no objection to that, the report is received for the records of the committee.

(The report referred to may be found in the committee files.)

Mr. KRONZER. It is an especially meaningful report to the lawyers because the college is an honorary organization of trial and appellate lawyers, most of whom are in the large defense firms and have no direct connection with automobile reparations. While it is critical of many of the conclusions drawn in the DOT studies, the college committee did make recommendations in the nature of "Evolutionary Reform, Type 1," appearing on pages 116-117 of the Volpe report. The sugges-

tions also comport with part III of the Volpe report, entitled "Alternatives to the Automobile Accident Tort Liability System."

The college recommends comparative negligence, elimination of the guest statutes and other immunities, compulsory liability insurance and/or an uninsured motorist fund, changes in court procedure, including arbitration as under the Philadelphia plan, voluntary short-cause, nonjury trials as in Los Angeles, the use of small claims courts with simplified procedures, merit rating and, perhaps more apropos this subcommittee's present injuries, a compulsory first party medical pay-income loss provision in the amount of \$1,500. This coverage would be subrogated.

While it is impossible to know what effect on rates these recommendations might have in a State operating under the archaic contributory fault system, it is submitted that this alternative would preserve the fault system for the more severe causes in a much more justifiable way than any of the nonfault proposals.

Turning to a brief analysis of H.R. 7514—and I would state again I appreciate the fact that I may be bearding the lion in discussing this proposal. But I would think it is a matter on which the committee would like to have either opposing or conflicting views.

Mr. Moss. The committee extended its invitation to give you the broadest latitude to present your views. The chair's statement yesterday to Mr. Markus was occasioned by the clear inference from Mr. Markus that the chair had acted in response to enacting special legislation. The chair made it abundantly clear then, as he will at any time, that the legislation was a product of the report which was made under legislation sponsored by the chair.

In no sense was the statement meant to inhibit the witnesses appearing before this committee. The chair intends to protect the right of every witness to express his views as his conscience dictates.

Mr. KRONZER. I wholly deny and disavow any intent to impugn either the integrity of the chair or committee or the Department of Commerce or Transportation.

But looking at it in its exact sense, I am sure the committee knows without my amplifying on it, that it virtually abrogates the collateral source doctrine. No doubt, the collateral source doctrine is dear to the hearts of the trial lawyers, and except in those compulsory jurisdictions, the collateral source doctrine is one I have never heard a satisfactory answer to its elimination.

The act, as it is presently proposed, provides no wage loss benefits for partial disability for a working person. It provides no economic loss benefits to injured housewives, children, students, the elderly and probably the unemployed (sec. 2(15)), and because such payments as are made are periodic (sec. 5(a)(2)), and lawyers can only be employed to the extent provided in section 8, the courthouse doors will be closed in the event of a dispute with the carrier.

Nor is there any comfort to be found in the catastrophic harm exception. The number of persons that can qualify under section 2(13) would be extremely limited, and, what is more, the great probabilities are that very few persons will procure the coverage because it is not required.

With full respect to the chairman and the integrity of his efforts, as well as those of the Department of Transportation, we sincerely

believe that regardless of the import of the DOT or private attitudinal surveys an informed insuring public would not accept such a plan as an alternative to a properly operated fault system even if some slight saving is effected.

There is an analogy between the present situation and the hue and cry raised against the "fault" system approximately 60 years ago by the workman. Due to the insulative common law doctrines of contributory negligence, assumption of risk, and the imputations of the negligence of a fellow servant, it was a rarity for any injured workman to obtain relief.

This resulted in the wholesale passage of workmen's compensation legislation providing for medical care and limited benefits for limited periods of time and the elimination of recovery for intangible losses. We note with interest the care and caution exercised by the DOT in not analogizing in depth the present problem to that rather dismal workmen's compensation picture, particularly in States authorizing private insurers to insure compensation risks. What is more, under the compensation act there is at least an impartial cloak thrown about the injured workman in the form of an administrative agency, but under these proposals there is no shield to protect the injured automobile victim other than the carriers themselves.

Nor do we subscribe to the DOT conclusion that merely because the coverage is first party there will be less contentiousness regarding the extent of disability (Volpe, p. 128). When the indefiniteness of wage loss and disability is injected into any insuring relationship it leads to much dispute. Both compensation claims and claims under health and accident policies bear mute witness to this fact. Moreover, since any recovery is pegged to total disability, numerous disputes must be portended.

We respectfully submit that a comparative negligence system, such as has existed for 45 years in railroad and maritime employees cases, is a viable and fair system for adjudicating differences between parties, and we lawyers in Texas pray thee to give us an opportunity to try it before scrapping a system for one which we think will deliver even less benefits to accidentally injured automobile victims.

Thank you, Mr. Chairman and members of the committee.

Mr. Moss. The Chair recognizes the gentleman from Texas, Mr. Eckhardt.

Mr. ECKHARDT. Mr. Kronzer, in referring to the college plan, as you point out, a compulsory first-party medical pay-income loss provision is recommended there. So, in effect, we are not disputing whether there should be a no-fault system but at what point no-fault system should commence and at what point it should extend to the exclusion of tort liability, are we not?

Mr. KRONZER. I would say we substantially agree, Congressman Eckhardt. Of course, when you treat the interest of the first-party coverage as a subrogated interest as distinguished from the Massachusetts type plan, as is true of the college plan, the plaintiff could forgo it and immediately proceed on his cause of action without any consideration being given to receiving the first-party benefit. This is something he can perhaps not do in Massachusetts, at least unless his expenses exceed \$500. It is a difference in the way it is pegged to give you primary benefits.

Mr. ECKHARDT. So the college plan permits a choice of completely forgoing the no-fault portion of the insurance.

Mr. KRONZER. That is true.

Mr. ECKHARDT. Now, if that is done, do you think that there would be any savings realized from such a change with respect to the processing of cases?

Mr. KRONZER. Yes, I do.

Mr. ECKHARDT. Do you think there would be a substantial number of cases that would follow the no-fault process?

Mr. KRONZER. Yes, I do, for the same reason we are apparently seeing it in Massachusetts: it is a smaller claim level.

Mr. ECKHARDT. Now, with respect to the no-fault system that is recommended by the college, you would still have the same questions raised as you raised under H.R. 7514 in your item 4, would you not, that lawyers can only be employed to the extent provided in language similar to section 8, because, I suppose, in almost every no-fault plan there must be some difficulty in generating a lawyer's fee at any given time if the pay-out is on the basis of expenses accrued at the time.

Mr. KRONZER. Well, if you have had an opportunity to look at the college plan, it does regulate the contingent fee. The way, though, even as a regulated fee, it would be handled under that plan would be similar to what we are confronted with now in the subrogation interest in workman's compensation.

At the time you are offered employment, very often the base of the employment is gone and at that juncture, you feel, can't produce an appropriate result and you don't take it. In that respect, the lawyer has been removed from the arena.

Mr. ECKHARDT. Now, suppose under a bill similar to H.R. 7514—and I am not here raising the question of exactly what the triggering device for tort liability should be—but let us assume you have a bill similar to this one, but you also have the opportunity to sue for damages beyond what is covered under the no-fault limitations. Then your argument in item 4 of page 6 of your statement is not really applicable, is it?

Mr. KRONZER. That would be true, that would not be applicable.

Mr. ECKHARDT. Of course, the lawyer could represent the client with respect to the no-fault portion of the issue of extent of damages and could realize his fee out of recovery that exceeded that amount, a lump sum settlement, for instance, with respect to recovery that might exceed the area which was covered by no-fault.

Mr. KRONZER. That would be true if you preserved the fault system in excess of the no-fault benefits.

Mr. ECKHARDT. You refer on page 6 to section 8 of H.R. 7514, though lawyers may be limited to section 8 in H.R. 7514, yet section 8 seems to me to be rather generous in providing that there may be an award of reasonable attorneys' fees if the insurer denies all or part of a claim for benefit under such policy.

So if the injured person goes in and makes his claim and the insurance company doesn't pay it in full, that is the point where he needs a lawyer, isn't it? If he needs a lawyer, then section 8 provides for reasonable legal fees.

Mr. KRONZER. The trouble there, viewing it from the standpoint of employment by the lawyer, is that he must make a prediction of the

possibility of prevailing against the carrier and without any recompense from the client at that stage.

Since it is discretionary and may only be recovered after he is successful, it is not at all different than what you have in State law where you have a penalty—attorneys provision for the failure to pay on life or health and accident insurance.

Invariably, the lawyer takes an across-the-board contingent fee, and the cases always hold that the recovery of the fee is made a part of the total recovery; and I don't know lawyers anywhere that are accepting contingent fees on the basis of a type of an arrangement like this without some other arrangement to participate in the total proceeds.

MR. ECKHARDT. Well, I agree with you entirely that there is a question involved in the no-fault end of the insurance coverage in any plan you devise. There is a place where a lawyer may well be needed in determining the amount of damages.

I also agree with you that for persons to assume that because one is seeking his recovery against his own insurance company, that he is going to be paid off like a slot machine, is entirely wrong.

The reason that is done now is because most of the first party coverage, that is, property damage coverage is relatively small, whereas the claims against the other insurer, under liability insurance, are the ones that are really in contest.

I agree with you entirely on that. But it would seem to me that the provision for lawyers' fees in section 8 should give the lawyer reasonable prospects of being paid through a part of the judgment in which the court is determining a reasonable attorney's fee for the no-fault portion of the recovery. I don't see that you have too much ground to complain about that section, because it seems quite liberal.

MR. KRONZER. Well, Mr. Congressman, if I am not incorrect in my analysis of H.R. 7514, you must relate section 8 to the definition of economic loss on page 4, and you cannot prevail unless you establish total disability. The only coverage under this act is total disability. So you could not have a partial attorney fee recovery on a partial recovery on the basis of a partial disability.

MR. ECKHARDT. Well, I believe what we may be getting back around to, is that your major complaint about this bill is not so much the question of the means by which the lawyer recovers his fee under section 8, but the fact that there is no provision in this bill for permanent-partial disability below 70 percent and there is no way you can trigger a tort suit in this bill.

MR. KRONZER. There is no provision for it below 100 percent.

MR. ECKHARDT. Well, of course, if there is 70 percent or more, then you move into the tort area.

MR. KRONZER. But when you move into catastrophic harm, you don't have any coverage. That is additional optional coverage. You don't have anything there under the whole act.

MR. ECKHARDT. Under the whole act that is true, unless the party—

MR. KRONZER. It is opting coverage, and most people are not going to take it.

MR. ECKHARDT. Most people, you assume, would not be covered by liability insurance?

Mr. KRONZER. If this were the law of the land, there is optional coverage for the catastrophic harm and the companies are required to have a policy available, as I understand the act as it is now drawn, that would pay 50 or 300, but it is not required coverage. So that once you get up over 70 percent, you have a perfectly legal defense, "non est e pluribus unum."

Mr. ECKHARDT. I think this raises a point with respect to all of these bills that have been proposed. That is the assumption that some requirement of liability insurance would be removed by the passage of a no-fault bill is probably not a valid assumption, because if there is to be recovery for damages in automobile accidents, there would first have to be the first-party coverage, and there would also have to be liability insurance with respect to that which fell beyond first-party coverage.

Is that the point you are making?

Mr. KRONZER. That is true. Of course, the essential position that we take, Mr. Congressman, is that with the impetus that has been furnished, we believe the fault system, with the correcting devices that are now occurring, and with probably a first-party primary compulsory coverage, as in the American College plan, will do a much better job than a highly limited and highly restricted benefits legislation such as this.

I hasten to add, again, that there is no partial disability benefit. There are no benefits to nonwage earners, and there isn't any provision for catastrophic harm for the tort system to take over.

Mr. ECKHARDT. Does the college plan require compulsory insurance?

Mr. KRONZER. As far as in the Virginia plan, an uninsured motorist provision.

Mr. ECKHARDT. So you would have both liability insurance, or something similar to it, and you would also have first-party coverage under the first-party plan.

Mr. KRONZER. Yes; which would be subrogated or deducted, either way you want to look at it.

Mr. ECKHARDT. Do you recommend something of that nature, whatever plan we adopt?

Mr. KRONZER. I do personally. I believe the implementation of a college plan, which is occurring, again, as I say, by reason of the impetus of the Congress in these studies, will work appropriate disposition of causes at the State level.

I do not say that all of the people that I am aligned with or represent here today agree with the compulsory first-party coverage, whether it is \$1,500 or \$2,500, simply because they still don't feel that the fault system is wrong; that one of the basic philosophies of this study is there is a social problem: The guilty ought to be compensated. That is a philosophy with which we disagree, and particularly with the premise that the totally guilty party should be relieved of his fault. A proportional fault system is what we espouse.

Now, if you superadd these costs arising from first-party coverage onto the person who is not the wrongdoer, then you have, to that extent, increased insurance costs. It makes the injured party the one who has to bear the social consequences of the injury when it was not his fault, particularly if it is subrogated.

Mr. ECKHARDT. Well, I have a strong feeling that at some point in any process there must be the threat of an effective lawsuit handled by a tough and able lawyer. I don't think you can avoid that.

But it seems to me that is what should be at the end of the road, and it seems to me there ought to be some way in which a great number of lawsuits can fall in a category that doesn't require the rather complex and costly practices used to determine the question of fault.

Would you agree with that, or would you disagree?

Mr. KRONZER. I would personally agree with that. As you perhaps heard me state, the college plan also envisions the compulsory arbitration provision at the smaller claims level, the Philadelphia-type program and the Los Angeles small claims procedure, where you waive a jury and try it before a court as a matter of expediency of disposition of claims.

There is no doubt, Congressman Eckhardt, that the addition of a no-fault first-party coverage for wage loss and medical pay, which is not subrogated, will move a great number of claims at the claim stage without the intervention of counsel that are not presently being moved in that fashion. There is no question of that, that is true.

Mr. ECKHARDT. I think that movement is most desirable. Thank you.

Mr. MOSS. Mr. Broyhill?

Mr. BROYHILL. No questions. I believe Mr. Eckhardt has asked all of the questions I was concerned with.

Mr. MOSS. Mr. Ware?

Mr. WARE. No questions.

Mr. MOSS. Mr. McCollister?

Mr. MCCOLLISTER. No questions.

Mr. MOSS. Mr. Guthrie?

Mr. GUTHRIE. Just so the record is straight, Mr. Kronzer, in the point you make against H.R. 7514, point No. 2, you say it provides no wage loss benefits for partial disability of a working person. Of course, the bill does provide for wage losses up to \$36,000 or 36 months; that is correct, is it not?

Mr. KRONZER. I meant partial in the sense of bodily injury or 50 percent partial injury is not to be compensated under this act.

Mr. GUTHRIE. Certainly, this is compensation in terms of wage loss.

Mr. KRONZER. As I read on page 4, the term "economic loss" is to mean during which injury or death results in the inability to engage in gainful activity substantially or similar to that engaged in prior to injury or death. That is under all compensation acts the meaning of total disability.

Now, where is there any provision for partial injury, a person that is not totally injured?

Mr. GUTHRIE. Well, if you are incapable of the ability to engage in gainful activity substantially the same or similar, isn't that—

Mr. KRONZER. The total disability test is what is used here—and it may not have been the intent—that you intended employed in H.R. 7514. If he is able to engage in any gainful activity related to his employment, then he is not disabled.

Mr. GUTHRIE. Substantially the same or similar to.

Mr. KRONZER. Yes, correct. But if he can engage in any gainful activity substantially the same or similar to that engaged in prior to

injury or death, he is not entitled to benefits. Conversely, you may be partially disabled under all compensation legislation and be able to engage in some of the occupations of your employment.

Mr. GUTHRIE. If it is substantially the same.

Mr. KRONZER. That's right. That is a total test that you are using here. It is not a partial test.

Mr. MOSS. I think the record ought to show that the Chair at this point is in disagreement. And for the purpose of the legislative history, I want that disagreement clearly on the record, because it is my judgment that this does deal with partial disability. It is clearly the intent, and if there is any question of that as we move along, the intent will be clarified.

Mr. ECKHARDT. Will the gentleman yield?

Mr. MOSS. Yes, indeed.

Mr. ECKHARDT. I believe we had some discussion the other day in which we used examples. For instance, a person who had been employed, say, as a cable splicer at a relatively high rate who was injured so he could no longer climb might be employed in a less gainful occupation, such as, for instance, a storeroom keeper.

Mr. MOSS. All right.

Mr. ECKHARDT. I think our discussion in that was to cover the difference in his pay in that type of occupation. In this sense, this would cover a kind of partial disability, if I understand the language correctly.

Mr. MOSS. That is certainly the chairman's view.

Mr. ECKHARDT. Perhaps he would like to comment on that.

Mr. KRONZER. My only position is not to question the intent; mine is to interpret what I read, and I still say that that is nothing more, nor less, than a total disability provision.

Now, it is tied down in one way, Mr. Chairman. It is tied to occupation. Many, if not most, of the compensation acts provide for any purposes, that is, totally to seek gainful employment in any business or occupation, whereas this is one similar to his work that he was engaged in before the accident. But it would still deny him any relief if he returned to that employment that he was engaged in on the minute of his return, even if he was able to do any part of that work, and he would not have any partial disability.

Mr. MOSS. Even though it might result in a lower salary?

Mr. KRONZER. That is correct.

Mr. MOSS. Well, that is not the intent.

Mr. ECKHARDT. Will the gentleman yield again?

Mr. MOSS. Yes.

Mr. ECKHARDT. I didn't understand the witness' first answer here to deny the proposition that I was making, that is—

Mr. MOSS. But the witness' statement just denied the proposition.

Mr. ECKHARDT. I think there might have been a contradiction in his own statement. I understood him first to say that if the man went back to his present job or a job of a comparable level, of course he would be denied compensation.

Mr. MOSS. That is correct.

Mr. ECKHARDT. But if he went back to any other job, he would, as I understand it, not be denied the difference between what he earned on that job and what he would have earned at his normal employment.

Mr. MOSS. That is the Chair's understanding.

Mr. KRONZER. So the record will be clear from my standpoint, let me say what I intend to say with respect to this. Under all compensation acts, the return to work itself is not the test. A man may be totally disabled, even though he is back on his job, if he is working under what is called the whip of economic necessity.

So the test of total injury is not determined by his physical presence at his employment. In that respect he could return to his place of employment, and if a jury were to determine that he was unable, he could recover benefits under this provision. But if the jury were to find that he was 50, 60, or 70 percent partially disabled, he could not.

Mr. MOSS. Are you talking of a disability on a permanent basis beyond 36 months?

Mr. KRONZER. No, I am dealing with the extent of—

Mr. MOSS. Well, the Chair must respectfully disagree with the proposition you have just stated, and counsel advises the Chair as to the correctness of his position, and, again, the discussion is for the benefit of this record. I think it clarifies at least the position of the Members of Congress here on this question. I think that would be of very substantial significance in the determination by a court under this language.

Mr. KRONZER. You have, unfortunately, a great body of law in the compensation area dealing with this type of language.

Mr. MOSS. I don't think we are dealing here with any common law on the basis of the Federal standards.

Mr. KRONZER. You have the Secretary of Transportation defining what is meant by disability and the extent of it in your other provisions, particularly those dealing with catastrophic harm.

Mr. MOSS. I am inclined to think the Secretary will look closely at the history of the act for guidance in promulgating his rules and regulations. Mr. Ware?

Mr. WARE. Mr. Chairman, if you would yield for a moment. I just wanted to ask Mr. Kronzer whether he had any substitute language for this particular language, or if he would like to offer anything later which he may think would resolve the intent of this.

Mr. KRONZER. I would be happy to do it at the request of the committee.

Mr. MOSS. If the gentleman would like, we will hold the record at this point to receive it, and the gentleman's request will be made to the witness.

Mr. KRONZER. If the record will totally bear out, Mr. Chairman, that in so doing I am not in anyway approbating the legislation.

Mr. MOSS. It will be submitted to the committee, and it does not in anyway subject the gentleman to support it.

Mr. KRONZER. I would be most happy to do that, but I would have to show my people in Texas that I sure wasn't trying to comply with the committee's view here.

(The information requested was not received at the time the record was printed.)

Mr. MOSS. Mr. Guthrie?

Mr. GUTHRIE. I have just one other question, Mr. Kronzer. It directs itself to your No. 3 on page 6 where you state that H.R. 7514 provides no economic loss benefits to injured housewives. I will go no further.

Mr. KRONZER. Not gainfully employed.

Mr. GUTHRIE. I would point to page 5 of H.R. 7514 which reads:

All appropriate and reasonable expenses necessarily incurred as a result of such injury or death, including, but not limited to, expenses obtained in services or substitution of those that the injured or deceased person would have performed for the benefit of himself or his family.

Mr. KRONZER. In regard to a specific element of damage that deals with medical or family care. It doesn't have to do with wage loss or loss of services.

Mr. GUTHRIE. We are not in the field of damages here, Mr. Kronzer. This is what would be payable under this first-party, no-fault insurance, net economic loss or economic loss to an individual. If a housewife had to get substitute services, that would be provided for under this legislation.

Mr. KRONZER. Certainly, sir; I didn't mean to question that.

Mr. GUTHRIE. I thought that is what your item No. 3 on page 6 means.

Mr. KRONZER. We certainly agree that this bill subtracts from the common law remedy the loss of services and the loss of the housewife, consortium, and all of the other rights the family had prior to this. This act wipes out all of those, and also gives her nothing for her loss of service or losses of a student or a child.

Mr. GUTHRIE. Again, I think it should be clear that where he is partially disabled in excess of 70 percent, there would still be tort recovery.

Mr. KRONZER. He would then be thrown into the catastrophic harm provision in which, again, I say that is a very minuscule number. Plus, I doubt whether there will be any substantial procurement of opting coverage under that. You have a "pie in the sky" when you talk about getting into that level of tort claim that is left when "catastrophic harm" takes over.

Mr. GUTHRIE. I have no further questions.

Mr. Moss. Any further questions?

Well, I want to thank you for your appearance here, and I also want to thank you for volunteering to draft language, and again I want the record to be clear on this point in drafting it that you do not commit yourself to supporting it.

Mr. KRONZER. Thank you, sir, and I would be in your debt to have the record reflect that.

Mr. Moss. Our next witness is Lorne Worthington, president of the National Association of Insurance Commissioners.

STATEMENT OF LORNE R. WORTHINGTON, PRESIDENT, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; ACCOMPANIED BY JOHN HANSON, EXECUTIVE SECRETARY

Mr. WORTHINGTON. Mr. Chairman and members of the committee, my name is Lorne R. Worthington. Today I am appearing on behalf of the National Association of Insurance Commissioners, commonly referred to as the NAIC, both as the insurance commissioner of Iowa and as president of the NAIC. Having its inception in and regular meetings since 1871, the NAIC is the oldest voluntary association of State officials. It includes the principal insurance regulatory authorities of the 50 States, the District of Columbia, and the territories of the United States.

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no-fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the administration has tentatively endorsed the no-fault concept, it has concluded that "mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform; and that the Federal assumption of the current State regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable."¹ The administration recommends that solutions, built upon specified general principles, evolve at the State level to permit experimentation and testing of different approaches. Thus the basic issue is joined—that is what is the most appropriate approach to test and/or implement the no-fault concept.

NAIC POSITION ON THE NO-FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of State insurance regulators, views the fault versus no-fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjusted to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the question being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, et cetera. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its central office staff, adopted a position statement which, among other things, said that question of fault versus nonfault:

Is an issue involving widespread ramifications far beyond the traditional confines of insurance regulation. "The decision is to whether the present system should be reformed is not a legal decision nor is it a statistical one; it is a question of values." Thus the type of system adopted is a broad question of public policy. The NAIC, therefore, opposes the adoption of basic changes in the

¹ H. Con. Res. 241, 92d Cong., 1st sess. (1971).

liability system on a Federal level, but encourages experimentation with different alternatives on a State-by-State basis.²

Mr. Chairman, the report from which I quote is a report of the Special Committee on Automobile Insurance Problems prepared by the NAIC in 1969. It also contains a statement of position in reference to automobile insurance made by that body, and I would like to submit it for your consideration.

Mr. Moss. We would like to receive it for our committee review rather than for our specific record, because again there would be no sense in having this as it is not originally from you.

Mr. WORTHINGTON. We have copies available, and if anybody wants it, it will be available in the future.

Mr. Moss. I think five copies will be sufficient for the staff and members of the committee.

(The report referred to may be found in the committee files.)

Mr. WORTHINGTON. Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, State insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no-fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

THE STATE-BY-STATE APPROACH

While we, as insurance regulators, will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholders complaints, and respond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in this sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no-fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added

² NAIC statement of position on automobile insurance, "Report of the Special Committee on Automobile Insurance Problems," June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study.

to the pressure for change. Proponents of no-fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—that is, lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forgo, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objective.³ Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (for example, judicial reform, shift to comparative negligence, regulate contingency fees, et cetera), (3) rely on evolutionary reform by combining fault and no-fault coverages, (4) establish a total no-fault system, and (5) utilize Government insurance.⁴

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

In general, these surveys indicate that the public has mixed attitudes about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system.⁵

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a State-by-State basis rather than at the Federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solutions will emerge. The NAIC, therefore, opposes the adoption of basic changes in the liability system on a Federal level, but encourages experimentation with different alternatives on a State-by-State basis. Whatever the system, the various State insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several States. The public by its responses to legislation and by the decisions it makes in the marketplace in accepting or rejecting various coverages and services offered, will ultimately settle the issue.⁶

This remains the judgment of the NAIC. Furthermore, it has been subsequently fortified by both Secretary Volpe's statement before the Senate Commerce Committee⁷ and by the DOT report which said:

Moving in stages toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that could serve to modify

³ See DOT, "Motor Vehicle Crash Losses and Their Compensation in the United States," a report to the President and Congress, 101-111 (March 1971) (hereafter cited as the DOT report).

⁴ See *id.* at 112-127.

⁵ *Id.* at 81.

⁶ NAIC statement of position, note 2 *supra* at 17.

⁷ "Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus; the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations, and variations of recovery rules, insurance coverages, etc." Statement of Secretary of Transportation John A. Volpe before the Senate Commerce Committee, Mar. 18, 1971, p. 2.

the goal itself. A little observation is worth a great deal of speculation, and State experience with diverse plans will provide us with that opportunity for pilot project testing which must precede massive reform.⁸

Furthermore, Secretary Volpe said:

First, it seems clear, at least to us, that there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go in changing the reparations system. It is also clear that there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We, ourselves, don't claim to have definite answers to these questions either. At a result, it seems to us that we should seek change through State action, but consistent with the broad outlines or principles of a system such as that described below. We need not and do not insist that a single reform system be imposed upon all the States. The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system.⁹

In brief, we simply don't know at this point what the answer or combinations of answers are. With all due respect to the advocates of the Federal no-fault plan, we submit that no one knows the answers to these questions (and others which could be posed)—and until we do, no one knows what final form a national program should take.

CAVEATS ON FEDERAL MANDATED STANDARDS AND VOLUNTARY GUIDELINES

Secretary Volpe urged that change commence now and the administration is supporting a joint concurrent resolution putting the States on notice that they are expected to resolve this problem within a reasonable period of time. We don't disagree that some change is needed, although the magnitude or direction of change is subject to intense debate.

IMMEDIATE UNIFORM MASSIVE CHANGE IS PREMATURE

At the one extreme the proposed Uniform Motor Vehicle Insurance Act would establish rigid statutory standards as to what must be in an automobile insurance policy. Such an approach has the practical effect of destroying flexibility and tends to freeze in limitations in coverage.¹⁰ Perhaps even worse, the uniformity imposed would preclude the consuming public from the opportunity to register its choice over a meaningful period of time and thereby make the insurance mechanism responsible to the public's evolving concept as to the appropriate balance between benefits and costs.

THE COST FACTOR

No matter how hard we try, it is either impossible or foolhardy to ignore the ramifications of the cost of any given program or alternative. As the NAIC staff study pointed out:

In appraising the worth of any system, a very important consideration is the cost of such system as compared to the cost of possible alternatives. Public clamor

⁸ DOT report, p. 133.

⁹ Volpe's statement, note 7.

¹⁰ The chief advantage of a standard policy is that it facilitates prior comparisons. In the past, uniform terms have often led to uniform and noncompetitive prices. Competition in policy terms usually leads to more innovative contrasts and broader terms.

over increasing automobile insurance premium levels has significantly added to the pressure for change. * * * the NAIC strongly supports efforts to reduce the cost of automobile insurance to the public to the extent that such reductions are consistent with other major objectives. It must be remembered that no program can meet all demands since the demands themselves are frequently in conflict. It is virtually impossible to pay more accident victims more dollars and reduce costs at the same time. Thus, whatever changes are recommended they should be evaluated with a view towards the best balance possible between conflicting objectives and particularly between the objectives of increased benefits and cost savings.¹¹

As the DOT report noted, "consumer attitudes about automobile insurance have shown its cost to lead all other concerns."¹² Consequently any program which does not afford the consumer an opportunity to relate the benefits he desires to the costs he must pay may create more public dissatisfaction than it eliminates.

This point is particularly relevant to a program such as automobile insurance whose costs are bound to increase. The DOT report has recognized:

Perhaps the most pervasive influence upon automobile insurance as a public issue on recent years has been inflation.¹³

In effect, an automobile insurance company is a mass purchaser of a variety of goods and services such as medical, hospital, lawyer and court services, wage replacements, repair goods and services, et cetera. As the cost of these elements increase, the cost of insurance must do the same.¹⁴

If such costs continue to inflate (and there is little reason to hope otherwise), initial cost savings resulting from changing the system would soon be forgotten and public frustration with costs would arise anew. This suggests that, while efficiencies in the system are important, drastic changes aimed at reducing premium levels (or lessening increases) may result in only temporary relief.¹⁵

Much of the American motoring public is being led to believe that no-fault is a panacea, bringing with it broader coverage, payment in all cases, and lower costs. The idea that something must be given up in order to get something else back has not yet registered in many quarters. The passage of the proposed legislation, without a preliminary period of trial and error during which the public would become educated as to its advantages and disadvantages would be able to relate its wants to its costs by choice in the free market, could set the stage for massive public disenchantment with all who were connected with its enactment.

The establishment of minimum mandatory benefits, such as those being discussed, in a Federal statute poses far-reaching, long term ramifications. In fact, the same can be said, although perhaps to a lesser extent, as to the establishment of Federal guidelines to which the States should strive since such guidelines would tend to become the minimum norm of consumers' expectations to what they are "entitled to: by right."

If the cost of such benefit exceeds what the public is willing to pay, Federal subsidies may be necessary and you should be prepared to recognize that potential need.

¹¹ NAIC report, note 2 supra at 103.

¹² DOT report at 138.

¹³ Id. at 61.

¹⁴ E.g., over the past decade doctors' fees and hospital daily service charges increased 58 and 155 percent, respectively. Id. at 61.

¹⁵ NAIC report, note 2 supra at 103.

CAUSE FOR SKEPTICISM

Though we don't question the conviction of the proponents of this proposed Federal act as to the rightness of their solution, past experience with massive Federal programs entitles us to voice some skepticism. For example, we launched into medicare and medicaid without an adequate exploration and testing to ascertain the cost implications; the impact on the delivery of health, et cetera. The program is now being devoured by expenses, the demand on medical facilities has skyrocketed, and now a few short years later persons are advocating scrapping these programs and launching into something else. In conjunction with national health plans it has been said:

There must be a critical review not only of the estimated cost of such proposals but with the financing mechanisms as well as with the services which are expected to be provided. At the moment, in the rush to design these new proposals, it appears to be forgotten that the planners of Medicare and Medicaid grossly underestimated the cost of these programs. They also gave little heed to the existing shortage of health manpower and facilities which had been seriously aggravated by these new programs.¹⁸

This observation could apply with equal force to the proposals for Federal automobile insurance reform. Forecasts as to the costs of this system are necessarily conjectural. It is only by a process of trial and error that the public will ascertain the true costs and only by experimental efforts at the State level can the best solution be found and earlier mistakes more readily rectified before they assume unmanageable proportions.

This example, as well as other examples which could be named, is not cited in criticism of the results which were sought but rather as an example of what occurs when massive Federal involvement and planning on a nationwide uniform basis in complex areas precedes or supersedes the market mechanism as an allocator of economic resources. Original concepts which were so convincingly put forth have often proved to be wrong, but the adverse consequences of the error have been "frozen in" over a period of time.

Let us avoid making a similar mistake as to automobile insurance, which involves 100 million automobile drivers and nearly all American families. This is the message Secretary Volpe was conveying when he emphasized the need for experimentation. Certainly the Ontario experience—where motorists rejected coverage combining the fault and no-fault concepts put forth on a voluntary basis—should give one pause in mandating a fixed uniform standard on a nationwide basis.

FEDERAL GUIDELINES

Although we support the State-by-State approach of the administration, we do have reservations concerning the adoption of Federal guidelines or objectives such as those in the proposed concurrent resolution. Such standards, in addition to the concern previously mentioned above as to creation of certain expectation, tend to prejudice what the marketplace has not yet passed upon—for example, the choice of an essentially no-fault over a reformed-fault system, the determination that automobile insurance should be the primary coverage, et cetera. Such stand-

¹⁸ Wheatley, "Promises and Problems of National Health Insurance," an address before the American Pension Conference, New York, N.Y., March 1971.

ards tend to restrict the range in which proposed changes would fall and hence the range of consumer choice.

This does not say that the choices implicit in the standards proposed are incorrect but rather they are premature. If there are to be minimum Federal standards, we feel that broader standards which give greater meaning to experimentation should be adopted. The minimum criteria for any automobile insurance system as stated by the NAIC in its statement of position on automobile insurance could be a sample of the kind of Federal standards that would be meaningful.¹⁷ Nevertheless, a resolution by Congress expressing both the need and its will for prompt State action in exploring, testing and implementing improvements in the existing system would be an appropriate indication of the sense of Congress. This would serve notice on both the business and the States that progress is expected.

A TIME FOR CHANGE AND CURRENT MOMENTUM

All of this is not to argue for the status quo, nor to minimize the impact of the landmark DOT study, congressional hearings, academic works, State insurance departments' efforts and NAIC research. Quite to the contrary, each of these have significantly contributed to the emerging consensus that improvements are needed and have pointed out possible directions which should be considered and tested. Furthermore, the NAIC supports the administration's position of recognizing not only the worth but the virtual necessity of a State-by-State approach until a clearer picture emerges as to the right answers—an answer which may vary from State to State or region to region.

To some proponents of the Uniform Motor Vehicle Insurance Act, the State-by-State approach is tantamount to doing nothing. This is incorrect. In addition to the prod from Congress in the form of a congressional resolution, the States are receiving the same pressures for change that Congress receives. Few, if any, argue for the status quo. The basic research study is done. As of the early part of this month, we understand that no less than 28 States are now considering no-fault or modified no-fault legislation. Other States have created study commissions. Some may be waiting to capitalize on the experimentation of others and others no doubt are waiting to see if Congress is going to preempt the field to give the States time to act. The proposals range from the complete no-fault program of the American Automobile Insurance Association to those which primarily seek to improve the existing legal liability system such as the American trial lawyer's reform package with all sorts of variations in between.

¹⁷ "Whatever is decided as to appropriate legal framework, the NAIC believes that any automobile insurance system should include as a minimum the following elements:

"A. Ready access to insurance for all licensed drivers at prices which are reasonable, with a means to purchase insurance through an assigned risk mechanism for those who cannot purchase it in the voluntary market.

"B. Provision for prompt payment of basic economic loss and improved claims procedures.

"C. Provision for protection from insolvencies, uninsured motorists, and hit-and-run drivers, etc.

"D. Meaningful classifications which are broad enough to spread risks and yet not so broad as to lessen availability of coverage.

"E. A responsive and meaningful pricing and marketing system.

"F. Protection for the insured against arbitrary and unfair cancellation and nonrenewal.

"G. Full disclosure of the nature of the coverage to the purchaser."

Secretary Volpe, in his statement before the Senate Commerce Committee, said:

Further change in the auto reparation system at the State level has clearly moved off dead center and would appear to be achieving some momentum. I could not have made that statement a year ago. I think this constructive move should be encouraged, perhaps guided and helped but not preempted by Federal action.¹⁸

The activities mentioned above support the basis for the Secretary's beliefs and clearly demonstrate the heightened momentum. At this point, with so many different and sometimes conflicting ideas floating around, and so much uncertainty as to what should be done, it is too early to predict what the States will and will not do. But events are moving sufficiently so, in our judgment, to warrant giving the States an adequate opportunity to act. If past experience is any guide a variety of approaches will be tested and the best features of the various programs will emerge. At that point, the trend will be toward a more uniform system throughout the various States.

Of course, during the period of experimentation, we would be going through a phase when a number of different plans would be used in a number of different States. America is a mobile Nation. Complications can be expected in the administration of a system as significant portions of the public journey across State lines. During this period, insurers operating across State borders will have to provide for the variations in coverage through appropriate endorsements. It will present some administrative problems for the insurers and regulatory problems for the States. But this is a small price to pay compared to the damage which could occur if an ill-considered national program was imposed upon the Nation in one installment from the top.

FEDERAL REGULATORY INTERVENTION

Although most attention on the proposed Uniform Motor Vehicle Insurance Act has focused on the mandating of the no-fault concept, the act poses another fundamental issue, that is, State versus Federal regulation of automobile insurance. There can be no mistake as to the pervasive regulatory power vested in the Secretary of Transportation. For example, the Secretary would: (1) determine and approve the financial substitutes for insurance, that is, bonds, self-insurance, (2) determine by rules and regulations the percentage of responsibility for net economic loss assigned to motor vehicles larger than ordinary passenger cars, (3) approve policy terms, conditions, exclusions, and deductibles, (4) promulgate a uniform statistical plan for compilation of claims and loss experience which every insurer must follow, (5) require standard uniform and standard minimal policy provisions, classes of risks, and rating territories, (6) prescribe rules and regulations under which insurers would submit premiums being charged for each class of risk in each rating territory, (7) make available a comparison of insurers' rates based upon claim and loss experience, (8) organize an assigned claims bureau in each State, and (9) make, amend, and repeal rules and regulations as he deems necessary.

¹⁸ Volpe's statement, note 7 *supra*.

Under existing State law, the insurance department possesses comprehensive regulatory authority over insurers doing business therein. For example, State regulation encompasses these elements: (1) the incorporation of companies, qualifications, capital and surplus requirements, et cetera, (2) the specification of required reserves, (3) the specifications of the areas in which insurance assets may be invested, (4) the approval of policy forms, (5) the supervision or monitoring of rates, for adequacy, excessiveness, and nondiscrimination, (6) the collection of statistics and the making of reports, (7) the examination of companies to determine if reserves are adequate, investments comply with the law, claim practices are satisfactory, et cetera, (8) the licensing and supervision of those who sell insurance, and (9) provision for residual coverages such as the assigned risk plans.

The regulatory overlap is substantial and clear. Confusion, waste, an increasingly complex system, and extra cost to the taxpayer in administering the automobile insurance is bound to result. We submit that such a dual system is not in the public interest.

In this connection, it should be pointed out that the DOT report recognized that:

* * * the basic determinant of the size and nature of the compensation requirement, i.e., car crash losses, is almost entirely, if not completely, a function of outside forces—traffic, law enforcement, safety measure, car design, driver licensing and education, highway design, et cetera. Loss costs, themselves, reflect the prices being charged in the market place for hospital and medical care, auto repair and replacement parts, legal services, the cost of vehicles, et cetera, and they, too, cannot be significantly influenced, at least directly, by the compensation mechanism.”¹⁹

The NAIC earlier reached the same conclusion.

Traffic safety or the absence thereof, the economic climate within which automobile insurance functions and the legal system upon which it rests have a fundamental impact on the cost and the operation of the automobile insurance system despite the fact that they are external to the system and not subject to that system's control. Nevertheless they comprise the framework within which the system functions. Although the insurance system has its defects, some of the basic problems are caused externally and can only be remedied outside the system. Congress, various federal agencies and administration, the judicial system, the providers of medical services, the automotive industry, state activity or lack thereof in traffic safety, et cetera, all have contributed to the basic problems.²⁰

Thus the insurance industry and the regulators thereof have had to function in a legal, social, and economic environment not of its own choosing. The problems stemming from this environment should not be translated into discarding those operating within it as long as they commit themselves to adjust to a new environment when it comes about. The DOT report, at the outset, made this same point:

The conclusions made about the present system and its operations should not be interpreted to reflect adversely on any of the participants. The subject under investigation was in fact the “system” and not those who have tried to make it run and improve it. The conclusions are directed to the system.²¹

Furthermore, the administration in the proposed resolution stated that:

The principal problems and abuses with respect to automobile insurance stem from the defects in the system for compensating accident victims . . . rather

¹⁹ DOT report, p. iv.

²⁰ Report of the NAIC Special Committee on Automobile Insurance Problems, 15 (June 1969).

²¹ DOT report, p. iv.

than from defects in the insurance institution or in its regulation by the several states.

Consequently, shifting to a Federal regulatory mechanism (even if Federal guidelines or objectives are adopted) is not warranted nor recommended by the comprehensive studies made. As indicated earlier, the State insurance regulating mechanism has no vested interest other than its commitment to meeting the public needs in the extent to which the tort liability system is modified or eliminated. We regulate the providing of insurance now and can continue to do so on either a fault or no-fault basis on either basis.

A PRACTICAL NOTE

As has been aptly pointed out elsewhere and referred to in this statement, inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington. Public expenditures, increase in governmental activities, deficits, monetary policy, taxation, et cetera, all (with the exception of monetary policy) under the control of Congress largely determines the presence or absence of inflation.

This is not to say that improvements cannot or should not be made in the insurance mechanism at the State level. They should be made and they are being made. But the respite will only be temporary if inflation continues to take its inexorable toll. Efforts by Congress to deal with inflation, often hampered by political considerations, have not been effective thus far and there is national pessimism about the likelihood of any improvement in the picture.

SUMMARY

The basic issue with which we are confronted is the appropriate means to test and/or implement the no-fault concept as it applies to motor vehicle insurance. Whether or not this concept or some variation should be adopted is a question of public policy which extends beyond the traditional confines of insurance and the regulation thereof. Whatever the decision, however the State insurance departments have and continue to be prepared to regulate in the public interest.

This whole question involves a host of complex factors, conflicting objectives and a multiplicity of alternatives. As the DOT report documented, the public attitudes, and understandably so, are confused and "mixed." As a consequence, the NAIC opposed the enactment of the proposed no-fault legislation on a Federal national level and recommends experimentation on a State-by-State basis to resolve the problems posed in a manner responsible to the public's choice in the marketplace reflecting its balance between benefits it wants at costs it is willing to pay. A congressional mandate as to mandatory and uniform coverage would destroy flexibility, freeze in error and preclude choice and self-determination. Massive Federal involvement, would seem to be premature. Similarly we express reservations as to the establishment of Federal guidelines or objectives since these would prejudice what the market has not yet passed upon and would tend to inhibit the range of consumer choice.

These comments are not to argue for the status quo nor against the no-fault concept set out in the proposed legislation. We agree that some change is needed, although the extent is subject to debate. The

NAIC supports utilizing the State approach to ascertain the best plan or plans. This process is already well underway as indicated by the already extensive activity at the State level.

Furthermore, the NAIC opposes legislation which interjects an extensive Federal regulatory mechanism over automobile insurance. Such would create duplicatory regulation, confusion, and unnecessary expenses. Both Secretary Volpe's statement and the comprehensive DOT study clearly indicate that such intervention is not warranted so long as the States can continue to adjust to the changing environment. Furthermore, the proposed statute with its mandatory uniformity and inflexibility would turn back the clock 25 years to recreate what the antitrust laws and the Senate Antitrust and Monopoly Subcommittee have attempted to discourage these past many years.

In short, the NAIC endorses the administration's positions on experimenting with different approaches at the State level. If Congress believes that some type of congressional action is necessary, we feel that the resolution approach is the most appropriate. However, the inclusion of specific Federal standards in such a resolution would be premature and would intend to inhibit the wide range of experimentation which it seeks to achieve. On the other hand, the resolution could express the "sense of Congress" by pointing out the problems, taking cognizance of the various studies and conflicting objectives and calling upon the States the industry, and other interested parties to develop and test solutions within a reasonable period of time, such as 5 years. Failure to do so could be construed as an invitation for Congress to undertake the task.

That concludes my prepared testimony, gentlemen, and I would be pleased to answer any questions you might have, if I can.

Mr. Moss. What is the status of no-fault in your own State, or of any change in the insurance system in your own State?

Mr. WORTHINGTON. We have a bill which is before the Iowa Legislature, before the House and Senate in their commerce committees, which provides for a modified kind of no-fault system which meets the minimum standards that Secretary Volpe has stated, and it provides for the coverage for medical payment.

It modified, as I said no-fault. It retains the right of an insurance to subrogate another carrier if that person is insured and has been at fault.

Our bill goes further than any bills Congress has before it or any State has, in that we are also attempting to deal with the automobile insurance problem in a perfective way, which, I think, needs more attention; that is, our bill substantially alters the driving laws in our State making it more difficult for a person to maintain and obtain a driver's license.

It speaks to the problems on the highways, the habitual violators of traffic laws, drunken drivers, and it speaks to the automobile itself. I would hope Congress would take more definitive action in that area.

Our bill would provide that a car cannot be licensed on public highways if it exceeded 80 miles an hour. No car could be licensed for use on highways if it can accelerate from zero to 60 in 90 seconds or less. It provides for protective bumpers, and it provides other safeguards.

We are saying in Iowa that the automobile insurance problem is much broader than the tort system. It involves the cars people drive,

and it involves the drivers from other States as well as involving the tort system.

Mr. Moss. Do you have any complaints from the Iowa motorists over the cancellation of their policies?

Mr. WORTHINGTON. We adopted 2 years ago a law which provides a measure against cancellation and protects against nonrenewal.

Mr. Moss. Do you have cancellations?

Mr. WORTHINGTON. We have cancellations.

Mr. Moss. Are they increasing?

Mr. WORTHINGTON. They are decreasing, with the inception of the law that was passed about 18 months ago.

Mr. Moss. Under the new law what does it require?

Mr. WORTHINGTON. It provides that automobile insurance policies can be canceled only for purposes of nonpayment of premium or loss of drivers license, along with other minor things.

Mr. Moss. Are you adding failures to renew?

Mr. WORTHINGTON. The law provides that an automobile insurance company cannot fail to renew a policy for reasons of a person's occupation or residence.

Mr. Moss. Are any of the insurance companies withdrawing Iowa business?

Mr. WORTHINGTON. No, they are not. As a matter of fact, I have a letter from one of the leading insurance companies in the United States saying that the market position is such in Iowa that they want us to clearly understand that his company is attempting to expand their business in Iowa, notwithstanding their withdrawal from other areas of the country.

Mr. Moss. You have had no increase in either failures to renew or cancellation?

Mr. WORTHINGTON. Not within the last 18 months since the new law went into effect.

Mr. Moss. Could you explain for the committee the pattern over the last 3 years of the failures to renew and cancellations, giving us both the statistics for the period prior to the enactment of the law and the 18 months since the law was enacted?

Mr. WORTHINGTON. Yes, we can. The committee needs to understand, however, that our statistics are ones that have been generated in such a manner that they may be subject to some question from a statistical person. They appear to be satisfactory to satisfy us in our conviction that they are accurate, but a statistician might say that we have an inaccurate situation of this nature.

Mr. Moss. It is, rather than an actual tabulation of complaints.

Mr. WORTHINGTON. What we did prior to the law was send a questionnaire to every company licensed in Iowa asking them to keep records for a period of time as to who they canceled, the reasons, and what policies they failed to renew and what reasons they gave for nonrenewal. This was 100-percent sampling for these companies for 2 months.

Mr. Moss. Are they required by law to maintain these, or was this an accommodation to your office?

Mr. WORTHINGTON. This was something we requested of them to do.

Mr. Moss. Did they all do it?

Mr. WORTHINGTON. During that 2-month period.

Mr. Moss. Did you test it to determine the accuracy of determining those statistics that have been supplied you?

Mr. WORTHINGTON. We have no reason to believe they are not accurate.

Mr. Moss. Do you have reason to believe they are accurate?

Mr. WORTHINGTON. Yes, we do.

Mr. Moss. What is the reason?

Mr. WORTHINGTON. That the complaints we received from the policyholders appear to be in direct proportion to the information we received.

Mr. Moss. Then you have some method of validating the figures given to you by the companies?

Mr. WORTHINGTON. Yes, sir.

Mr. Moss. You correlated the actual complaints with the statistics supplied by the carriers; is that true?

Mr. WORTHINGTON. What I am saying, from my training in college, what little I studied of statistics, I didn't apply the very technical tests that you have to do in statistics to be sure.

Mr. Moss. Well, if you give us the method utilized in obtaining the statistics, then we can undertake some appropriate evaluation for some of them.

What is the outlook for the enactment of this package of legislation in the Iowa Legislature?

Mr. WORTHINGTON. I mentioned at some point in my testimony that some States—

Mr. Moss. I mean only Iowa.

Mr. WORTHINGTON. Let me continue this way: Some States are preparing to act; other States are waiting to see what Congress is going to do, and other States are waiting to see what other States do.

In Iowa, the chairman of the Commerce Committee has asked for complete copies of everything your committee is doing so he can see and determine whether Congress is going to preempt the States. If Congress does not preempt the States' rights, then he intends to act. If Congress does preempt the States or set guidelines, he intends to move as rapidly as possible, it is my understanding, toward meeting those guidelines or toward providing a bill for Iowa citizens.

We are in a quandary, and I think most States are in that; that if you pass the legislation you propose to pass, whatever action we take now would be preempted by your actions and probably not in the best interests, because we would have conflict.

Mr. Moss. Well, I have here a clipping from the Des Moines Tribune, Wednesday, April 7, 1971, by Jack Coffman of the Des Moines Register and Tribune Co.

The headline says: "Insurance, Safety Bill, Fischer Doubts Vote This Year."

It goes on to say: "The legislation is in the house commerce committee, nerve center of insurance legislation in the Iowa Legislature. Representative Harold Fischer, powerful chairman of the commerce committee, is 'ticked off' about the way the bill was presented and 'doubts' there will be any action on it this year."

It indicates many reasons remote from the Congress as to the basis of that conclusion.

"Fischer, an insurance man himself, keeps tight control over the commerce committee, and very little insurance legislation gets considered by the legislature without his blessing."

Is that factual?

MR. WORTHINGTON. I think as I stated the position, Mr. Chairman, it is more factual than the newspaper article.

MR. MOSS. In other words, you say he is perfectly willing to move at this time?

MR. WORTHINGTON. As soon as he knows what Congress is going to do, I can present to you——

MR. MOSS. Why don't you carry the message back to him that if he moves quickly he might discourage Congress.

MR. WORTHINGTON. I can read to you a letter he has sent to me since that article appeared requesting me to tell him what the Congress was going to do to make sure you weren't going to preempt his rights.

MR. MOSS. I understand he has referred it to a subcommittee, but so far the bill has not even been printed, and the reason is that it has not met on it at all, and that the subcommittee has two of its three members who are insurance men; is that correct?

MR. WORTHINGTON. Your information is not entirely accurate.

MR. MOSS. I am reading from one of your very distinguished newspapers, and if there are inaccuracies, I would like you to give us the accurate information. Are there two or three members of the committee——

MR. WORTHINGTON. Insurance men; yes, sir.

MR. MOSS. Has the bill been printed?

MR. WORTHINGTON. It has not been printed by the legislative research bureau. It has been supplied to all of the legislators.

MR. MOSS. By whom?

MR. WORTHINGTON. By our insurance department.

MR. MOSS. The insurance department printed the bill and supplied it to the legislators?

MR. WORTHINGTON. Yes.

MR. MOSS. Don't you print bills after they are introduced in the legislature?

MR. WORTHINGTON. Let me explain the Iowa system.

MR. MOSS. I think all that is necessary is a yes or no.

MR. WORTHINGTON. I think more than that is necessary, because you are trying to ridicule our bill.

MR. MOSS. This Chair will determine the needs that he has when he asks a question, with all due deference to you. This is the Congress, and you will comply with the rules and the customs of the Congress.

In this instance, I ask the question, and I want the answer to that question. I don't need a lecture on the political structure of the State of Iowa. I want only that item answered.

MR. WORTHINGTON. I apologize, Mr. Chairman. I wasn't attempting to tell you how to do things. It is a very unique situation.

MR. MOSS. Do they print bills when they are introduced?

MR. WORTHINGTON. Not always. A bill can be introduced by title.

MR. MOSS. Well, what you are saying is that they use the custom of many State legislatures of skeleton bills; is that correct?

MR. WORTHINGTON. A bill can be introduced by title, and the legislative research bureau then puts it in the form that they require it.

Mr. Moss. In other words, they put in a skeleton bill. Is that what was introduced by title?

Mr. WORTHINGTON. Yes, it was introduced in its entirety and by title and submitted to the legislative research bureau to fit——

Mr. Moss. It was printed then only by title?

Mr. WORTHINGTON. Yes, sir.

Mr. Moss. Has the committee met or taken any action?

Mr. WORTHINGTON. The subcommittee has met. The subcommittee is awaiting the direction of the parent committee as to whether they feel it is necessary that they act.

Mr. Moss. Did Fischer contact you last November regarding the legislative program, and did you say that you didn't have a legislative program?

Mr. WORTHINGTON. When he contacted me last November, I said our legislative program was not yet prepared.

Mr. Moss. Well, here is the quote:

Fischer said he and other members of his committee—and this is background—contacted Worthington last November and asked about his legislature program. "He said he didn't have a legislative program," Fischer continued, "and here he comes, two months after the session starts, with an 88-page bill."

Is that correct?

Mr. WORTHINGTON. The quote is not completely accurate. Our bill was not prepared yet.

Mr. Moss. In other words, you did have a program, but it was not prepared?

Mr. WORTHINGTON. That is correct.

Mr. Moss. I notice you also have requirements for bumper height standardization.

Mr. WORTHINGTON. Yes.

Mr. Moss. Do you think that can be achieved on a State-by-State basis?

Mr. WORTHINGTON. Yes, I think it can.

Mr. Moss. Do you think that automobile manufacturers can agree with you it can be? We seem to have difficulty getting it on a Federal basis.

Mr. WORTHINGTON. I think this is a case where the States can act more effectively than the Congress can.

Mr. Moss. Well, you know I chaired this same committee just a few years ago when we heard auto safety legislation and the representation was made at that time by representatives of the States that had the thrust of saying if you don't do it, it won't be done because we can't do it.

Now, maybe they were uninformed. They were with the motor vehicle department, and you disagree with them and say they are not accurately reflected?

Mr. WORTHINGTON. Yes.

Mr. Moss. Do you mean to say that seriously—Iowa is not one of the smallest States in the Union—with the market for automobiles in Iowa that the imposition of a standard there would lead to adoption of a nationwide standard? What happens if you agree on, let us say, a 15-inch bumper clearance uniformly and another States requires 18 and another one 12? Who produces the automobiles to meet all of

them? Do they go to the 12-, 15- or 18-inch space for bumper clearance?

Mr. WORTHINGTON. I would hope there would be uniformity, Mr. Chairman.

Mr. Moss. How do we achieve that?

Mr. WORTHINGTON. In your State, for example, if my recollection is correct, they led the country in terms of pollution controls for automobiles and prepared to make requirements on the manufactures for minimum standards which has drastically influenced the whole system in the United States.

Mr. Moss. Well, we imposed a Federal standard on pollution, and then we exempted California from the Federal standard as long as it has standards equal to or higher than the Federal standards. I carried that onto the floor of the House.

Mr. WORTHINGTON. And California is to be congratulated for their leadership.

Mr. Moss. But if we had 10 State standards, how would we achieve uniformity?

Mr. WORTHINGTON. I think, Mr. Chairman, one of the things the organization I am here representing stands for are the things that are necessary—

Mr. Moss. That is like motherhood and we are all for uniformity. How do we achieve it within some timely frame of reference? What would be a reasonable period?

Let us move away from that and into insurance. On this last page here you talk about us taking a 5-year period. At the end of 5 years what do you think we should do then? Maybe we will have 5 or 6 States which in the intervening time acted on bringing their insurance laws into reasonable conformity with the proposals made by the Secretary in the resolution now before this subcommittee.

Mr. WORTHINGTON. My position on this has been stated before in congressional halls, and I am pleased to be able to state it again, and that is that the National Association of Insurance Commissioners opposed this kind of Federal preemption or movement into their areas only so far as the States fail to respond.

If, after 5 years the States do not respond, then I would be one of the first to come in and say, gentlemen, it is necessary for you to move in directly with some force and effect in the field and provide this need.

Mr. Moss. What is the manpower strength of the Iowa Insurance Department?

Mr. WORTHINGTON. We have about 70 people.

Mr. Moss. Seventy employees. What is the budget for the department?

Mr. WORTHINGTON. Around \$1 million.

Mr. Moss. Don't you have the figure?

Mr. WORTHINGTON. I don't have the figures with me, no, sir. It is approximately \$1 million.

Mr. Moss. Over a million or under a million? Would you like to supply the exact figure for the committee?

Mr. WORTHINGTON. I can do that.

Mr. Moss. We will hold the record without objection at this point and receive it.

(The following material was received for the record:)

IOWA INSURANCE DEPARTMENT BUDGET (INCLUDES ONLY EXPENDITURES
FOR INSURANCE REGULATORY ACTIVITIES)

	Salaries	Travel expense	Materials and supplies and printing	Capital outlay	Other	Total
Year:						
1970—724,045.....	537, 558. 00	70, 800. 31	53, 608. 24	9, 303. 19	18, 154. 34	689, 424
1969—724,045.....	502, 066. 42	54, 229. 75	20, 286. 58	6, 374. 95	9, 874. 27	593, 832
1968.....	317, 130. 00	12, 709. 00	30, 810. 00	3, 734. 50	-----	364, 383

Mr. Moss. The House has a rollcall on now, and it is going to be necessary for us to go to the floor, so we will adjourn until 2 o'clock, at which time we will return and attempt to conclude with you and move on to Mr. André Maisonnier and Mr. Loescher and Mr. Clayman in that order.

(Whereupon, at 12:30 p.m. the subcommittee recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

Mr. Moss. The committee will be in order.

Mr. Worthington and Mr. Hansen, you may return to the witness table.

At the time we broke for noon, I believe Mr. Eckhardt was questioning. Had you finished?

Mr. ECKHARDT. I had not started, Mr. Chairman.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. Mr. Worthington, one thing which has troubled me about this suggestion of a State approach is that it seems a little presumptuous of Congress to tell the States, "You have a great problem: we don't know how it ought to be solved, but we are mandating you to solve it in a certain way."

Now we have had testimony here that varies I suppose all the way from almost complete and exclusive tort liability, to almost complete and exclusive no-fault basis for recovery. For instance, the professor of insurance who appeared here—I forget the name of the witness—from Pennsylvania gave us excellent testimony; and his position was essentially that there should be no area at all left within the tort field respecting automobile accidents. But I think he did agree with me that there should be a greater attempt to embrace permanent disability. He was inclining toward equity established wholly within the no-fault area. I think that is a very strongly arguable position.

In other words, if every type of injury could be fairly and reasonably compensated within the no-fault area, I think we could find a lot of people who would agree that would be a good system.

There have been others that would narrow the area of no-fault to a relatively small area; as, for instance, I think Mr. Kronzer would do. And then of course there are all sorts of intermediate steps.

For instance, the bill that we have before us goes up to \$36,000, which is relatively high, and triggers tort liability with 70-percent partial permanent disability or certain other rather stringent requirements. We have the Massachusetts plan which has a relatively easy trigger to meet, but perhaps a somewhat artificial one which most plaintiffs' lawyers, if they wanted to meet it, could more or less manufacture.

We have the Puerto Rico plan, which apparently, from what I have heard here, permits recovery on a tort basis after the no-fault is exhausted. Whether there is a trigger there or not, I do not know; but there has been no testimony that there is. So that we have a wide range of possibility. We have had very impelling testimony as to the difficulties of following any one of these systems.

For instance, Mr. Kronzer was raising the question of the gaps with respect to recovery of housewives with no real, tangible loss in earning power. These, I think, are things of grave importance. And then there is the question of exactly where the trigger should exist. We have not decided that in this committee, I think. The witnesses have come to nowhere near a consensus. I would doubt that there is anything nearer a consensus among the members here.

Does it not strike you a little bit presumptuous for Congress to tell the States that "You must follow a certain scheme within a certain area, the parameters of which we will not tell you; but if you don't do it, something drastic is going to happen"? One witness even suggested that we abolish the whole tort basis for liability in auto accident cases within a specified period, telling the States that they have to act within a certain area. And yet we don't know exactly what guidelines to give them. Now what is your response to that?

MR. WORTHINGTON. The question that you raise is what I think is the strength of your argument that I attempted to present in my opening statement. That is that nobody really knows just exactly where the benefits ought to be and what the threshold should be and how far the tort system should be changed.

MR. ECKHARDT. Isn't it our responsibility to find out?

MR. WORTHINGTON. Most of us think it should be. I think the tort system should be changed drastically. But I am very wary of a change which would occur on a national level which might turn out to not be adequate or turn out to be one which did not work well.

MR. ECKHARDT. Let me say that at least tentatively I agree with you, there should be drastic changes. I think I can go so far as to agree with you that there should be some area of no-fault liability in order to reduce those cases that should be rather readily settled within some range of cases. But don't you think that we have the responsibility of determining how justice and equity can be worked, after all the testimony we will ultimately hear in this case, and either decide that the Federal Government should get into the field or that it should leave it altogether alone and let the States proceed?

Now, that is what we ordinarily do. We ordinarily don't say we are going to get into the field a little bit and we are going to tell States, "You have to do something in this field because we think it is an important field, and there is a lot of evil in it or there is a lot of inefficiency."

We either say, "Look, this is not our bag." And we stay out of it. Or we say, "This is our bag," and we are going to set up a Federal system which covers the field, either preempts it or permits in addition State legislation.

What is being called for here, it seems to me, is a new creature and a very different one from the kind that we ordinarily produce. Although we produce some rather monstrous creatures sometimes in Congress. I don't think we have ever created one quite that monstrous.

Mr. WORTHINGTON. If I could, I would like to give two examples. The first one, the kind of precedent for the Congress telling the States that they are on notice is Public Law 15, the McCarran Act, where Congress returned the authority to regulate insurance back to the States, but kept for itself the power to do just what you are doing now, and that is to periodically review how the problems have been met and reserve for themselves the right to act at any time in the future that they wanted to. The law says that pretty clearly.

Mr. ECKHARDT. Have we ever acted?

Mr. WORTHINGTON. You have acted consistently in your term of viewing what is happening.

Mr. ECKHARDT. Have we ever done anything to compel States to meet standards in that area?

Mr. WORTHINGTON. Not in the language of the McCarran Act where it required the States to pass some kind of laws which would allow them to regulate rates in a way that would meet the standards that have been set and all the States immediately did that.

That was the reason for the McCarran Act in the first place, because the rating system had been overturned by the Supreme Court. All the States acted immediately and in some way or other set up the mechanism to regulate rates. Now that mechanism has become somewhat outdated, in my opinion, and we are trying to change it now.

Mr. ECKHARDT. Let us stop a minute with the McCarran Act. For instance the State of Texas creates certain standard types of policies under certain types of insurance, regulates the amount of the rate absolutely and in effect prohibits competition with respect to offerings, either with respect to price or type of insurance policy. On the other hand, there are many States that permit free competition in the area.

So, you have as wide a range of difference under the McCarran Act as can possibly be envisaged, it seems to me. Do you anticipate that the same thing will occur if we leave the no-fault insurance question to the States?

Mr. WORTHINGTON. The significant thing about the rate regulation of the States is that all of them are different than they were before the McCarran Act. They had to meet some standards.

Mr. ECKHARDT. But they have not tended to come together?

Mr. WORTHINGTON. No, they have not.

Mr. ECKHARDT. We are getting the biggest storm from the public generally about the level of rates that has ever been heard. That is one of the triggering forces for this legislation?

Mr. WORTHINGTON. That is right. To answer your question, I think the second illustration I was going to give could be helpful in this. That is, in some Federal Government programs before they have national application you make trial projects. If my understanding is right, you carved out the area, particularly welfare programs, you tried it there to see if it worked before you made it nationally.

What we are saying is, you try these programs in some of the States and find out which ways they work the best. And we think we can achieve the kind of uniformity which will provide for normal flow in interstate commerce and the travel people do, although not the kind of blanket uniformity which would be one identical plan all over the United States. Because the problems of a person who lives in Manhattan, for example, are different than they are for a person living in Mason City, Iowa.

Mr. ECKHARDT. I somewhat question that. On this question of the height of bumpers, perhaps there should be a different standard in Texas, Iowa, and Kentucky. Because persons driving in East Texas might hit pigs; people in Iowa, cows; and people in Kentucky, horses. But I doubt that the differences would justify different standards in the three States, because they mostly hit automobiles.

Mr. WORTHINGTON. Quite frankly, sir, my action on the part of standardizing bumper heights and requiring certain minimum standards for bumpers is a kind of forcing action that we are talking about, of having Congress do for the States, which would force the Department of Transportation to act to set some standards that would provide for what I think is a gap in people's protection today.

I think it is proving to be effective, because the Department of Transportation has promulgated now some minimum requirements for bumpers. It is my understanding there is an agitation for more stringent requirements than even what they have promulgated already. I am not sure if the action would be happening as rapidly as it is if some of the States had not already taken the action to require things to happen on a State-by-State basis.

Mr. ECKHARDT. This leads me to another question from your testimony. On page 3 you were questioned concerning fault versus no-fault, the NAIC comprehensive background study by its central office staff. This is a quote I think within a quote. "The decision as to whether the present system should be reformed is not legal decision, nor is it a statistical one; it is a question of values."

Well, I am not quite sure what is meant by that. It seems to me that much of the question of values here is related to a legal question, a legal decision. Frankly, I don't consider legal decisions limited to the construction of a deed or the examination of an abstract. It seems to me in its best sense it deals with all regulation of human affairs in which the question of equity as between people is involved, and certainly that is evolved here. That has been the substance of the testimony, it seems to me, for several days.

Don't you think that the big question we have involved here is the question of the determination of the fact question of extent of damages and the application of the determination of that question in the most efficient way, so that persons may be made whole or partially whole at the least social cost? Don't you think that is essentially the question we have before us?

Mr. WORTHINGTON. I think that is. With your definition of a legal value, I would have to say that that would concur with our interpretation when we talk of a question of value as opposed to a statistical, purely legal one. We meant it is not a technical question. It is one which has to involve human beings and their needs. It is not one that can be cited in impartial objectivity of looking at statistics and figures. This needs to be looked at in terms of human needs and values.

Mr. ECKHARDT. I did not raise this as a quibble about terms. The question has much more important and deeper implications than just the construction of words. It seems to me that what this committee has to do, if it is going to fulfill its proper function and ultimately what Congress is going to have to do is to wrestle with this legal question that I have defined, and it has to come out with a nice answer to the question, not a generalized answer in which it leaves fuzzy edges. Because we are not dealing here with a question of quantity, but of quality. We are dealing with the question of a basic philosophy, if you please, a basic technique of achieving a kind of equity between persons who are driving cars and paying insurance and persons who are hurt as a result of driving cars.

It seems to me that we avoid our duty, we neglect our duty if we do not solve this with some precision. Now, it may be that we can set up guidelines which are sufficient, but I would rather doubt that. I would like to have your comment about it.

Mr. WORTHINGTON. I think it would be in keeping with the way I understand the McCarran Act for you to involve yourselves very directly, just as you are now, in terms of pointing out the problems that face the people in our country as far as insurance is concerned, insofar as bringing to everyone's attention the criticalness of the issue, and that it also would be in keeping with my understanding of the McCarran Act for you to speak as a sense of Congress of your concern over it and instruct us to begin rapidly to meet this particular need.

The States then would know that Congress, at least at this point, was not going to preempt their authority, it wasn't going to remain silent and let them sit back and wait until they were forced to do something, but rather they had an obligation to respond immediately to meet the needs of their own people in their own particular areas of the country.

Now I am not a States' righter in the strongest sense of that term. I look to Congress for leadership. I look to Congress for taking action. As I said earlier, if the States fail to respond, then I will be one of the first people who would like to say to you, "Move into this area and do something," because it has to be done. I just think it can be done better initially in an area we know nothing about and have had no experience, if we have some experimentation and it can best be done on a State-by-State basis.

Mr. ECKHARDT. Are you then suggesting we should wait a little while until there is State experience, and then enact Federal legislation which covers the field; or are you suggesting we ought to wait, encouraging the States themselves to act and simply not take Federal preemptive action?

Mr. WORTHINGTON. If the experience shows that the States cannot effectively do it, then I think you need to act.

Mr. ECKHARDT. Now the insurance commissioner of New Jersey has recently said, and it is quoted in the Journal of Commerce for Monday, April 26, that since New Jersey is a corridor State it actually can't effectively put into being no-fault insurance unless it is also adopted in adjoining States. This seems to be a rather reasonable contention to me, particularly when a State is so frequently traversed by motorists of adjoining States.

Mr. WORTHINGTON. In the report that Superintendent Stewart and his associate Ben Schenk made to Governor Rockefeller, and Governor Rockefeller made to the New York Legislature, they reached

this problem and they reached the conclusion that this problem is not insurmountable. I agree with that conclusion and I think through the provisions of the NAIC and through the insurance companies that, if they sell you or me a policy, that policy can cover us for the State in which we live plus give us the basic minimum coverage in any State in which we happen to be involved in an accident, without much difficulty.

MR. ECKHARDT. Aside from your example of the McCarran Act—and I have serious questions in my own mind as to whether the McCarran Act has adequately solved an essentially multi-State question effectively, but assuming that the McCarran Act is an example of what I am talking about—can you name me any instance in which a question involving movement in interstate commerce, and business like insurance involving interstate commerce, has ultimately been solved by States themselves adopting something in the nature of a uniform regulation?

Of course, my last qualification would, I think, exclude the McCarran Act. But can you name an example of that?

MR. WORTHINGTON. I can't think of one and there may not be any, but that is one of the things that we point to as insurance regulator and say we think we are the last vestige of the States exercising their regulatory authority. In nearly every other area, they have given it up to Washington.

MR. ECKHARDT. Traditionally, what we have done—and I think it has worked very well—we have taken the best example in a single State and we have tended to adopt that as a national standard if it appears to be a successful experiment in the State.

For instance, that was true of the New York Labor Act from which the Wagner Act was patterned. It was true of our control of air pollution, with much borrowing from the California act. In most of the instances there were few other States that had anything like a sophisticated act. We did not wait for some kind of uniform State action. We simply adopted that which was best in those States, and we proceeded to further perfect it. Or, if we were not doing perhaps as well as that State, in deference to my chairman's State, we simply let them continue their more comprehensive control.

But we have not gone along the line of simply shouldering off to the States the responsibility of handling an essentially interstate question, as you are suggesting here, in any case I know of.

MR. WORTHINGTON. I think that is correct, but you have consistently done it in insurance.

MR. ECKHARDT. But we have not achieved the result of uniformity. We have not achieved the result of reasonably low rates. As a matter of fact, the State of Texas, I understand, has quite low rates; but it regulates and it does not permit competitive rates for certain insurance. It seems to me we may run into that same question here where we are mandating a particular type of insurance.

What is the value of companies competing in the sales market?

MR. WORTHINGTON. I suppose the value would have to be that the economy has basically been built on the concept of competition and people's rights to build products which are different. Texas, as you are well aware, is a unique situation in insurance regulation. They are the strongest State in terms of making rates. The rest of us act on rates which are submitted to us.

Mr. ECKHARDT. And they are relatively low, are they not?

Mr. WORTHINGTON. I don't know how they stand in relation to the other States. Iowa's rates range something like 32d from the top.

Mr. ECKHARDT. Thank you.

Mr. MOSS. Mr. Broyhill?

Mr. BROYHILL. No questions.

Mr. MOSS. Mr. McCollister?

Mr. MCCOLLISTER. Mr. Worthington, various statements have been made regarding the proportion of premium payments which are paid for legal services. From the testimony that we have had, the impression is given that the adoption of the no-fault concept, whether federally or by the States, would greatly reduce the cost of these legal services, leaving more money available for payment of claims or reducing premiums or both. Yet are there not other questions that are legal questions that are involved in the determination of not just who is at fault, but the extent of the damage, the extent of the injury?

Would you have any concept of what proportion of these legal services are related only to the issue of establishing fault?

Mr. WORTHINGTON. I really wouldn't. I can give you a kind of example which might speak to what you are getting at, and that is the bodily injury premium for a liability policy in Iowa, if you have a 1969 car and you live in Des Moines and use it for pleasure use, is about \$40. If, through the no-fault proposal a person can save 20 percent of their premium, we are talking about saving \$8.

Now \$8 is \$8, and that is a significant saving. I think no-fault should be sold on the basis of other than cost saving. I think it should be sold on the basis of more rapidly meeting people's needs, eliminating some of the friction in the system that takes the money out, so that more dollars can be given back to the victims of the accidents. Those are the strengths of no-fault. The cost savings, I don't think, are as significant as we might hope they would be.

Mr. MCCOLLISTER. We have heard much testimony about the rapidly increasing premiums that all of us pay. What single factor is responsible for that increase in cost?

Mr. WORTHINGTON. I think the rapidly increasing inflation is the single most important factor in increasing insurance rates. Hospital costs have gone up enormously in the last 5 years. Doctors' costs have gone up enormously. The cost of repairing automobiles has gone up enormously.

As I mentioned in the statement, the insurance company is one of the largest single purchasers of these kinds of goods and services, and inflation affects it very directly.

Mr. MCCOLLISTER. So this public outcry of which all of us are aware regarding increasing cost is not likely to be completely resolved or perhaps even greatly resolved by the question of whether we adopt a fault or no-fault concept.

Mr. WORTHINGTON. No, I don't think they will. People will not be as dissatisfied with the cost if they receive the kind of service they hope to get. I think no-fault can provide some increase in the service, because it takes some of the friction out of the system. So they might not be as upset about the cost because they would get better service, but I don't think the cost savings are significant.

Mr. McCOLLISTER. I also want to say for the record that I have greatly appreciated your testimony. I am grateful to you for your testimony. I am grateful to you for it.

Mr. WORTHINGTON. Thank you.

Mr. Moss. Are there further questions?

Hearing none, I have just one item. On assigning to inflation the primary responsibility for increasing costs, in the repair of automobiles there is a factor other than inflation, isn't there? Isn't there a decline in the quality of the automobile, making it a more fragile piece of machinery and therefore more susceptible to damage?

Mr. WORTHINGTON. Absolutely.

Mr. Moss. That plays a major role in the higher cost, does it not?

Mr. WORTHINGTON. That is absolutely correct. Cars are becoming more and more fragile and the costs keep going up.

Mr. Moss. I want to express the appreciation of the committee for your testimony and your appearance here today.

Mr. WORTHINGTON. Thank you. We will leave this copy of the special report and will submit additional copies and attempt to furnish information requested.

Thank you very much, Mr. Chairman.

Mr. Moss. The next witness will be Mr. André Maisonpierre, vice president of American Mutual Insurance Alliance.

STATEMENT OF ANDRÉ MAISONPIERRE, VICE PRESIDENT, AMERICAN MUTUAL INSURANCE ALLIANCE

Mr. MAISONPIERRE. Mr. Chairman, and members of the committee, my name is André Maisonpierre. I am vice president of the American Insurance Alliance. We are a voluntary association of more than 100 mutual insurance companies which provide automobile and other property-casualty coverages in all 50 States and the District of Columbia.

We apologize for the length of our prepared statement which was delivered to the committee some time ago. We would appreciate it if the full statement could be made a part of the record. We would like to summarize briefly this statement.

Mr. Moss. Without objection, the full statement will be placed in the record and the witness may summarize.

Mr. MAISONPIERRE. Thank you, sir.

GUARANTEED PROTECTION PLAN

Mr. MAISONPIERRE. We believe that the excessive human and economic losses resulting from auto accidents can be dramatically reduced. To this end we have developed a reform proposal called the guaranteed protection plan which deals with all of the major factors contributing to high insurance costs and consumer dissatisfaction. This is a comprehensive approach to the automobile problem—an approach which calls for a responsible reform in the auto reparations system, in vehicle design, in driver performance, and in traffic safety regulations.

Since these hearings deal primarily with proposals for reforming the auto accident reparations system, most of this statement will be devoted to the insurance reform portion of the guaranteed protection plan.

The guaranteed protection plan is designed to achieve a reasonable balance among three difficult and often contradictory goals:

- (1) To provide crash victims with prompt and fair compensation.
- (2) To encourage driver responsibility.
- (3) To keep overall costs at a reasonable level.

Our statement describes the plan in detail. Let me merely outline some of its proposals.

The plan would require that every private passenger automobile policy issued or delivered in the applicable State shall include as minimum benefits, payable regardless of fault:

1. Medical and hospital expense coverage up to \$2,000 a person.
2. Disability income coverage of 85 percent of gross income lost during a period commencing 30 days after the accident, continuing for a year, subject to a maximum of \$500 per month.

Insurance companies would, of course, be permitted to offer broader coverages than the statutory minimums.

The guaranteed protection plan would retain existing liability protection. Persons with losses exceeding their first-party no-fault benefits would be entitled to compensation from the other driver for such losses. But, insurance companies which pay the medical and disability benefits to their own policy holders could seek reimbursement from the party at fault or his company.

Thus, the proposed system would be no-fault in the sense that the accident victim would collect for his basic economic losses, regardless of who caused the accident. But it would be a fault system in the sense that it would preserve the principle of personal accountability.

In order to simplify the payment of both fault and no-fault benefits, the plan calls for the compulsory arbitration of all liability claims under \$3,000 and an intercompany arbitration system to handle all subrogation matters.

The guaranteed protection plan sets an objective standard for determining general damages—those damages which go beyond the accident victim's out-of-pocket economic losses.

Payment for these damages would be limited to no more than 50 percent of medical and hospital expenses if such expenses ran \$500 or less. When medical and hospital expenses exceed \$500, payment for general damages would not exceed \$250 plus up to 100 percent of the excess over \$500. These limits are intended to curb nuisance claims and to offset the cost of extending the basic no-fault benefits to accident victims generally. These limits do not apply in cases involving death, permanent disfigurement, dismemberment, permanent loss of a bodily function, and in other exceptional circumstances where a court or jury finds such a limitation would be unjust.

In addition, the plan would require the adoption by the States of comparative negligence laws. To the extent that the operation of the contributory negligence rule sometimes produces a harsh, unjust result in individual cases, the proposed reform will eliminate these inequities.

To reduce excessive attorney fees, our plan calls for placing a limitation of 25 percent on such fees where they are contingent on the amount awarded the person represented by the attorney.

To protect car owners against unwarranted cancellations of their auto insurance, the guaranteed protection plan calls for passage of

legislation limiting permissible reasons for cancellation of private passenger auto insurance policies to nonpayment of premium or suspension of driver's license or vehicle registrations. In addition, specific requirements with respect to the insurer's intention to cancel or not renew are provided in the plan.

COMPATIBILITY WITH DOT RECOMMENDATIONS

There are many points of similarity between the guaranteed protection plan and the program recommended by the Department of Transportation. There are, also, some basic differences between the two approaches. Let me briefly outline these for you.

We agree with Secretary Volpe that the States should move promptly to experiment with reform plans which extend the use of first-party, no-fault coverage but which avoid radical irreversible changes. As the Secretary has indicated, there remains "much legitimate uncertainty about how far and how fast the public wants or is willing to go" in changing the present system.

We concur with the administration's position that basic benefits should be provided to auto accident victims on a first-party, contractual basis, and that these benefits should be paid to all accident victims without regard to fault. The benefits paid under the guaranteed protection plan would cover in full the wage and medical losses incurred in more than 95 percent of all auto crashes.

The Alliance proposal is also consistent with Secretary Volpe's suggestion that States might want to experiment initially with a reform plan that would offset the cost of first-party coverage by the savings achieved in revising the rules on general damages. Under our plan, such cost savings would be produced by imposing limits on the amount of general damages that could be collected for injuries not involving death, disfigurement, or permanent impairment.

We specifically endorse the administration's findings that:

Assumption of the present comprehensive State regulatory authority over automobile insurance by the Federal Government would be fraught with great and grave consequences giving rise to issues and problems of great magnitude, and is highly undesirable.

Our differences with Mr. Volpe have to do primarily with matters of timing, and of defining what constitutes "radical, irreversible change." Mr. Volpe argues persuasively in his testimony that there is an urgent need for experimentation at the State level to clear up major uncertainties about the cost, workability and public acceptance of any new system.

Having established that major uncertainties exist, very little credibility can be given to the DOT's proposal since it goes beyond the point of no return in the first stage of implementation.

We believe that the guaranteed protection plan offers crash victims better benefits and would allow for a more orderly testing of public sentiment than the administration program. The people affected by changes in the reparations system need to be able to see and make judgments about what they would gain and lose as the balance is shifted towards greater use of no-fault coverages.

COMPATIBILITY WITH CONSUMER ATTITUDES

One of the major considerations involved in assessing the practical and political feasibility of any new automobile reparations system is public acceptability.

In designing the guaranteed protection plan, the Alliance has conducted major research into the question of public attitudes and has tailored its various proposals accordingly. All of the available evidence indicates that the American public attaches considerable importance to the concept of driver responsibility for injury done to another.

This was demonstrated in a major national study of the attitudes and feelings of people who buy auto insurance, conducted by Market Facts, Inc., largest consumer survey organization in the Nation. This survey is described in some detail in our prepared statement. Let me just cite a few of the pertinent findings.

Auto accident victims who have been injured by a negligent driver are unwilling to give up the legal rights to collect for general damages, often inadequately referred to as "pain and suffering."

Six out of 10 consumers are opposed to pure "no-fault" auto insurance. Among those who have had experience with existing claim payments system, almost two out of three were opposed.

About two-thirds of the consumers interviewed felt that making automobile insurance excess over other benefits would not be "too good an idea."

In addition to this public attitude survey and in conjunction with its ever ongoing research in automobile insurance reform, the Alliance conducted an actual field experiment over a 12-month period in the Syracuse and Rochester areas, and several counties on the western edge of Chicago.

The 16 participating companies, representing a broad cross-section of the auto insurance business, offered third-party bodily injury liability claimants a choice of either collecting all of their medical expenses up to \$5,000 plus wage benefits equaling about 105 percent of their losses, to be paid promptly as the losses accrued, or they could reject this alternative and pursue a regular liability claim.

The major finding of this experiment was that given a choice between a guaranteed offer and a payment available under the existing auto liability system, only 25 percent of the eligible claimants elected to accept the alternative benefits in the Illinois experiment and 15 percent in New York.

Confirming this apparent public attachment for the present liability system is the response found in DOT's public opinion survey question, "In your opinion, is there a need to change this system?" In what ways?" More than two-thirds—68 percent of all respondents—did not express a preference that the system be changed.

UNIFORM MOTOR VEHICLE INSURANCE ACT

One of the most glaring shortcomings of this proposal is its incompleteness. The bill leaves many questions unanswered and many serious problems can result. The public is not being well served by being left in the dark about these unresolved issues. There is wide appeal in a plan which seemingly promises something for everybody with no controversy. But, it is the obligation of this committee not only to

examine these promises—which have been prominently publicized in the press—but also to examine the unresolved problems created by the proposal.

For instance, what rates would be charged for the compulsory coverages? What additional coverages would be needed and what would they cost? What costs would have to be paid out of the pockets of accident victims and which claims would not be paid under the proposed new form of insurance?

Note that 55 percent of the persons injured in auto crashes are not wage earners at the time of the accident. Many of these persons expect to enter or reenter the work force at some future date. Under the Uniform Motor Vehicle Insurance Act, these people would have no way to collect for any of the harmful effects an auto injury might have on future earning capabilities unless they sustain catastrophic harm. This inequity is even more immediate and glaring in the case of the unemployed. The bill does not answer how disability is to be defined, nor how the extent and the duration of this disability is to be measured, and what is meant by disfigurement.

Since most of the uncompensated economic losses reported in the DOT serious injury study consisted of future wage losses extending far beyond the 36-months cutoff period found in the Uniform Motor Vehicle Insurance Act, the proposed Federal bill will fall far short of providing almost total compensation for that group of crash victims.

Although the bill preserves the right of total recovery for those who are more than 70 percent disabled, this remedy is made largely meaningless by other provisions of the bill which would prohibit the States from requiring drivers to carry any form of liability insurance to pay for such losses.

Additionally, the bill creates serious inequities for the much larger group of seriously injured crash victims who suffer permanent disabilities below the 70 percent level. These victims would receive no compensation at all for going through life with some rather serious impairments. Under the disability rating system commonly used today a person may suffer a loss of limbs, serious loss of bodily function, deformity, recurring pain and other severe personal damage without being considered 70 percent disabled.

It is argued that general damages should be excluded from compensation because they are subjective in nature and are not susceptible of objective measurement in dollars. Yet, the same thing is true of a great many things in this world. How much is a man's time worth, how is its value determined? How do we determine the value of a piece of real estate condemned for a highway?

All of these things are subjective in nature. Yet we manage to translate them into dollar amounts by a process of bargaining and compromise. People who have been injured by a negligent driver expect to get paid something for their trouble, pain, and inconvenience.

Under the Uniform Motor Vehicle Insurance Act, very large numbers of auto accident victims would receive nothing at all from the compulsory personal injury coverages. Nobody would collect for damage inflicted on his automobile under the statutory coverages. Many of those who have wage continuation plans, health insurance, et cetera, wouldn't collect anything for their losses.

No doubt it will be argued that these losses are covered by other benefit systems. But the same argument can be made today. The point

is, both the present statutory auto insurance coverages and those proposed under this Federal bill are designed deliberately to leave out certain categories of claimants. The group left out is much larger under the Federal proposal than under the present system or guaranteed protection plan.

A glaring shortcoming in the Uniform Motor Vehicle Insurance Act is the damage that it would do to the orderly process of one of the Nation's major industries. For all practical purposes, the bill would abolish State regulation of insurance and superimpose a system of Federal regulation under the Secretary of Transportation.

There is nothing in the history of the Federal regulatory system to instill confidence that the Federal regulation of insurance would be, on the whole, more efficient than the present State regulatory system. The Congressional Record is full of official and unofficial criticism of Federal regulatory agencies for dilatory procedures, their inflexibility, their lack of independence, and competency.

Insurance remains one of the most diverse businesses in the Nation. In most respects, it is still a local business, built on local basis and serving local needs. The alliance believes that the regulation of insurance must recognize and respond to this diversity.

One of the politically popular features of the Uniform Motor Vehicle Insurance Act is the provision that would require auto insurers to accept all applicants for coverage, provided they have a valid driver's license and are willing to pay the premiums.

The most likely result of this will be to increase the cost of insurance for the vast majority of drivers who now enjoy preferred rates, since companies which attempt to set their rates at a low level attractive to such drivers would be inundated by high-risk drivers.

The guaranteed protection plan deals with the problem of insurance availability in a more reasonable fashion. It calls for an expansion of the present automobile insurance plans so as to guarantee reasonable limits of protection for both liability and other auto insurance coverages to every licensed driver.

Proposals for changes in rating procedures under the Uniform Motor Vehicle Insurance Act would not provide the public with meaningful price information, as its authors apparently assume. The type of data which the bill would require the Secretary of Transportation to publish has no statistical validity on an individual territory basis when subdivided into so many categories.

CONCLUSION

The problems generated by automobile crashes are far more complex than was generally realized when the reform issue first came to general public notice. We believe that the ensuing research, debate and soul-searching has been productive, and has produced something close to a consensus on the steps that must now be taken to bring about a reformed system and to bring under control the excessive losses. The alliance has been privileged to play a major role in the search for reform. We pledge to you and to the public our sincere efforts to accomplish these objectives.

This, Mr. Chairman, completes our statement.

(Mr. Maisonnier's prepared statement follows:)

STATEMENT OF ANDRÉ MAISONPIERRE, VICE PRESIDENT, AMERICAN MUTUAL
INSURANCE ALLIANCE

I. INTRODUCTION

My name is André Maisonnier, and I am a vice president of the American Mutual Insurance Alliance. We are a voluntary association of more than 100 mutual insurance companies which provide automobile and other property-casualty coverages in all 50 states and the District of Columbia.

We welcome this opportunity to tell you what the Alliance is doing to reform the automobile reparations system, to share our research with you, and to offer you our views on the proposals currently pending in Congress.

Automobile crashes impose an increasingly heavy burden on the American public. One out of four automobiles on the highways is involved in an accident each year. That adds up to more than 20 million crashes, 30 million damaged vehicles, more than 4 million injuries, 55,000 deaths and a staggering economic loss exceeding \$16 billion. That's the equivalent of about \$75 for every man, woman and child in the United States, or \$375 for a family of five.

The human cost—the pain, the injuries, the loss of life—are borne directly by the accident victims and their families. But the economic loss is shared by every motorist and consumer, in their out-of-pocket expenses and in the insurance premiums they pay.

The massive amount of research that has been conducted in recent years has provided a much clearer picture of what is causing these excessive economic losses. For example, it is now clear that vehicle damage has become the dominant factor pushing up the cost of auto insurance, rather than bodily injuries. About two-thirds of the total premium a motorist pays for a typical full package of automobile insurance goes for coverages that pay for vehicle repair or replacement, including property damage liability, collision and theft coverages. The cost of fixing cars damaged in collisions increased 111% from 1960 through 1970, while the average cost of bodily injuries increased 68%. When consideration also is given to the fact that damaged cars outnumber crash injuries by more than 7 to 1, it is clear that better bumpers and more crash-resistant vehicle designs are essential if automobile insurance costs are to be reduced.

II. THE GUARANTEED PROTECTION PLAN FOR AUTO REFORM

The American Mutual Insurance Alliance believes these excessive human and economic losses can be dramatically reduced. We have developed a reform proposal called the Guaranteed Protection Plan, which deals with all of the major factors contributing to high insurance costs and consumer dissatisfaction. This is a comprehensive approach to the automobile problem—an approach that calls for responsible reform in the auto reparations system, in vehicle design, in driver performance, and in traffic safety regulations.

The Guaranteed Protection Plan is the result of a decade of statistical studies, legislative research, public attitudes surveys, autocrash tests and field experiments with new claims handling methods.

This proposal is based on the premise that automobile insurance reforms alone cannot lift the intolerable burden created by highway crashes. Changes in insurance affects only what happens to the loss after it occurs—whether it is to be borne by the crash victim, paid by the negligent motorist, or shifted to someone else's shoulders. Any meaningful reform program—to be effective and serve the best interest of the consumer—must also concern itself with measures to keep the loss from occurring in the first place, and to reduce the severity of injuries and economic costs.

Since this hearing deals primarily with proposals for reforming the auto accident reparations system, most of this statement will be devoted to the insurance reform portion of the Guaranteed Protection Plan. The insurance reforms called for in the Guaranteed Protection Plan would produce changes in the insurance coverages purchased by car owners, changes in the procedures used to compensate crash victims, and changes in the legal rules governing the settlements of disputed claims.

These proposals for responsible insurance reform are designed to achieve a reasonable balance among three difficult and often contradictory goals:

1. To provide crash victims with prompt and fair compensation.
2. To encourage driver responsibility.
3. To keep overall costs at a reasonable level.

This portion of the Plan also seeks to allocate the cost burden fairly among vehicle owners, to prohibit unwarranted cancellations of insurance and to ease the burden on congested courts.

Highlights of the proposal are as follows:

1. Basic benefits would be guaranteed

State laws would be amended to require that very private passenger automobile policy issued or delivered in the applicable state shall include the following minimum benefits payable regardless of fault:

(A) Medical and hospital expense coverage up to \$2,000 per person limit in any one accident and subject to an optional deductible (applicable only to the named insured and resident family members) up to \$250.

(B) Disability income coverage of 85% of gross income lost during a period commencing 30 days after the accident and continuing for 52 weeks, subject to a maximum of \$500 per month or a total of \$6,000.

Persons covered include the named insured, members of his family residing in the same household, guests, passengers and pedestrians. Insurance companies would be permitted to offer broader coverages than the statutory minimums, and it is anticipated that healthy competition would provide a wide choice of higher limit, first-party coverages for vehicle owners who desired to purchase them.

2. Driver responsibility would be retained

Existing liability protection would be retained and made to work more effectively under the Guaranteed Protection Plan. Persons injured through the negligence of another driver would be entitled to compensation from the other driver for damages that go beyond the basic benefits. In addition, insurance companies which paid the medical and disability benefits to their own policyholders could seek reimbursement from the party at fault (if any) or that party's insurance company. Thus, the proposed system would be no-fault in the sense that the accident victim would collect for his basic economic losses, regardless of who caused the accident. But it would be a fault system in the sense that it would preserve the principle of personal accountability. The cost of the accident ultimately would be charged against the record of the negligent driver, and not against the record of the innocent victim as would be the case under a total no-fault system.

3. Claim settlements would be streamlined

Two different types of arbitration would be used to speed settlements, cut the cost of handling claims and ease the burden on the courts.

The Plan calls for mandatory arbitration of disputes in the vast number of liability claims involving damages under \$3,000, using court supervised procedures which have worked successfully in Pennsylvania since 1952. One of the Department of Transportation's studies found that 73% of litigated cases fall into this under-\$3,000 category. In Pennsylvania, such cases are assigned to a three-man arbitration panel, operating under rules and procedures established by the court having jurisdiction over the case. Either party may appeal the arbitrator's decision. However, the rate of appeals has been less than 8% under the compulsory arbitration procedure used in Philadelphia. A similar system was instituted on a three-year trial basis in New York State on September 1, 1970. Initial reports indicate that the plan has been well accepted in the Monroe County test area, which includes the City of Rochester, and that other areas of New York are considering adoption of mandatory arbitration.

A second form of arbitration would be mandatory in resolving disputes arising in subrogation claims between insurance companies. Intercompany arbitration already is widely used for handling auto property damage cases. The procedure is quick, inexpensive and efficient. The important thing is that the claimant is paid first and then any necessary readjustment of the insurance loss is made between the companies, without burdening the courts.

4. Objective yardsticks would be established for measuring damages

The Guaranteed Protection Plan would provide an objective standard for determining general damages—such as the damages for disfigurement, loss of bodily function, pain and suffering, and other damages which go beyond the accident victim's out-of-pocket economic losses such as medical expenses and lost wages.

Payments for these general damages would be limited to no more than 50% of medical and hospital expenses if such expenses ran \$500 or less. When medical and hospital expenses exceeded \$500, payment for general damages may not exceed \$250 plus up to 100% of the excess over \$500. These limits are intended to curb nuisance claims and to offset the cost of extending the basic no-fault benefits to accident victims generally. These limits do not apply in cases involving death, permanent disfigurement, dismemberment, permanent loss of a bodily function, and in other exceptional circumstances where a court or jury finds that such a limitation would be unjust. The court, or either party, may request an impartial medical panel to make a determination of this and other issues.

Objective yardsticks also would be established for measuring loss of earnings. At present, damages for loss of earnings are not subject to income tax. This allows some people to be overcompensated, because their recovery is computed on the basis of gross earnings instead of "take home pay." The Guaranteed Protection Plan provides that these loss of earnings awards be reduced in recognition of the income tax savings. The bill calls for a statutory 15% offset, subject to reduction if the claimant can show that his actual income tax would have been smaller. Enactment of this provision will assure that claimants seeking damage for loss of income will be neither undercompensated nor overcompensated for that loss.

5. Legal rules governing claim settlements would be streamlined

Two changes in the legal rules governing claim settlements are proposed. One calls for adoption of comparative negligence laws. Twelve states have adopted one form or another of the comparative negligence rule. Moreover, the doctrine is applied in claims coming under the Federal Employer's Liability Act, the Merchant Marine Act and the admiralty laws of the United States and England.

The Alliance believes the Wisconsin type of comparative negligence statute to be the most equitable of the various types now in effect. It provides that the person injured can collect from a negligent defendant as long as he is himself less than 50% negligent, and the defendant is more than 50% negligent. However, the amount of his recovery is reduced accordingly.

The "contributory negligence" doctrine currently in effect in most states provides that an injured party is completely barred from recovery even though his negligence was slight in comparison with that of the other party to the accident. In practice, the existing rule is not actually so rigidly enforced, and juries as well as insurance adjusters often apply something akin to a comparative negligent rule in arriving at judgments or settlements. However, to the extent that the operation of the contributory negligence rule sometimes produces a harsh, unjust result in individual cases, the proposed reform will eliminate those inequities.

Another change in the legal rules governing claim settlements is intended to further encourage insurance companies to make immediate advance payments to injured victims to cover medical expenses and wage losses as they accrue.

It provides that such advance payments will not be considered an admission of liability in any subsequent legal action that may result. A similar rule is proposed for property damage claims, so they may be settled separately from any bodily injury liability claim arising out of the same accident. This would encourage prompt settlement of the property damage portion, where final settlement of the injury claim is delayed pending medical treatment or other causes beyond the insurance company's control.

6. Attorney fees would be regulated

The Guaranteed Protection Plan would place a limitation of 25% on attorneys' fees where such fees are contingent (dependent) on the amount awarded the person represented by the attorney. It also permits the courts to establish graduated contingent fees scheduled subject to the 25% limitation. Attorneys also would be required to report all contingent fee payments to the clerk of the court.

The contingent fee system is widely used in this country, and is regarded as a means of making available competent legal representation to persons who might not otherwise be able to hire an attorney. At the same time, there is widespread criticism that lawyers' fees in auto accident cases are too high. The proposed regulation would prevent abuses in those cases not removed from the courts by other provisions of the Guaranteed Protection Plan, such as the

automatic first-party benefits and the use of mandatory arbitration in the vast majority of claims disputes.

Contingent fee regulation already is practiced today in some jurisdictions. The First and Second Departments of the New York Appellate Court have established fee schedules. Regulation also is enforced in Maine, Oklahoma, Massachusetts (criminal and domestic relations cases), and Pennsylvania.

7. Fraudulent claims would be discouraged

The Guaranteed Protection Plan provides for imposing stiff penalties for false and fraudulent activities with respect to claims filed against individuals or insurance companies. It also includes provisions regarding the admissibility in evidence of unreasonable refusal by a claimant to submit to medical examination to determine the nature and extent of his injuries and the medical treatment thereof.

8. Arbitrary policy cancellations would be prohibited

To protect car owners against unwarranted cancellation of their auto insurance, the Guaranteed Protection Plan calls for passage of legislation limiting permissible reasons for cancellation of private passenger automobile insurance policies to nonpayment of premium or suspension of drivers license or vehicle registration. Thirty-eight states already have enacted cancellation laws with insurance company support. Member companies of the American Mutual Insurance Alliance also have taken action through the appropriate rating bureaus to provide this protection voluntarily in the additional states. Passage of laws in the remaining states would make certain that all companies do so. The Plan further provides specific notice requirements with respect to the insurer's intention to cancel or nonrenew. It also requires that the reasons for cancellation be provided to the insured upon request.

9. Insolvency protection would be provided

To protect the public against insurance company insolvencies, the Guaranteed Protection Plan calls for prompt state enactment of post-insolvency assessment plans in every state where such plans are not already in effect. Under these plans insurance carriers licensed to do business in each state may be assessed to provide funds for paying the unmet claims of companies that become insolvent. To date, 23 states already have enacted insolvency legislation, including 1971 enactments by the states of Indiana, Maryland, Minnesota, Montana, North Dakota, Utah and Wyoming. Several additional states are expected to take action before the current legislative sessions end.

10. Vehicle damage losses would be reduced

The Guaranteed Protection Plan calls for major steps to reduce the excessive economic loss being produced by vehicle damage, which has become the dominant factor pushing up the cost of auto insurance. Coverages that pay for vehicle repair or replacement account for about two-thirds of the total insurance premium for car owners who buy a typical "full package" of coverage. For the owner of a late-model or new car, the ratio frequently runs 70% or more.

Changes in the reparations system are not the answer to this problem. It is essentially a matter of vehicle design. A high percentage of the auto repair bills are caused by low-speed crashes which should produce little or no damage if cars had adequate bumpers and more crash-resistant designs.

The Alliance is supporting legislation at both the state and federal levels to require that bumpers provide more adequate crash protection to both the rear and front ends of future models. The bumper standards issued earlier this month by the Department of Transportation are a step in the right direction, but the requirements are much too weak to do the job that must be done. Since the DOT is legally prohibited from issuing standards aimed directly at reducing auto repair costs, we are looking to the states to enact appropriate legislation on this subject. Florida and Maryland already have acted, and bills are pending in more than 30 other states. We also support federal legislation which would give the DOT authority to do the job.

As for compensation to car owners for damage caused in highway crashes, the Guaranteed Protection Plan would retain existing property damage liability protection for situations where the negligent driver should pay. The Plan also would retain collision and comprehensive coverages for those situations where the vehicle owner himself is responsible for the damage to his own car.

III. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH DOT RECOMMENDATIONS

The reparations system reforms proposed under the Guaranteed Protection Plan are similar in most respects to the findings and recommendations of the Department of Transportation, as continued in House Concurrent Resolution 241. In his report to the Senate Commerce Committee on March 18, 1971, Secretary of Transportation John A. Volpe proposed that the states move promptly to experiment with reform plans which expand the use of first-party, no-fault coverages, but which avoid radical, irreversible changes. Mr. Volpe noted that "there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go" in changing the present system. He also said there exists "genuine and warranted" concern as to the "unknown and essentially unknowable price and cost implications of any major change in the system."

Because of these unknowns, and for other reasons relating to the undesirability of a federal takeover of the state regulatory function, the Administration concluded that state level experimentation is indicated.

The Guaranteed Protection Plan is consistent with that recommendation, and in fact, already is being actively considered in a number of states, along with other similar plans. The proposed concurrent resolution outlines six principles for the states to use in evolving a "rational, equitable and compatible" new system for compensating auto accident victims.

1. The first principle is that basic benefits should be provided to auto accident victims on a first-party, contractual basis. The Guaranteed Protection Plan would require that auto insurance policies contain such benefits.

2. The second principle is that basic benefits should be payable to all accident victims without regard to fault, excluding those who willfully injure themselves. The basic benefits provided under the Guaranteed Protection Plan are on a no-fault basis. However, we have suggested that legislatures also consider excluding no-fault payments to persons injured while driving a stolen car, those injured while seeking to elude lawful arrest, and those injured while driving under the influence of intoxicating liquor or narcotics.

3. The third principle is that the basic benefits should provide compensation for all economic loss, subject to reasonable deductibles and limits, and the system should be designed to avoid litigation for the mass of accidents. The Guaranteed Protection Plan's recommended basic benefit limits of at least \$2,000 for medical expenses and at least \$6,000 for wage losses would be adequate to cover in full the wage and medical losses incurred in more than 95% of all auto crashes, based on DOT data. Taken as a whole, the Plan also would eliminate the delay and expense of court trials for all but a few serious cases where settlements could not be arrived at by negotiation. And, even in these few cases, the accident victim would receive the basic no-fault benefits.

4. The fourth principle is that the reparations system should provide adequate, but not excessive, compensation to the accident victim at minimum cost. Therefore, the resolution provides that benefits obtainable by the accident victim from other benefit sources should be coordinated and meshed with those obtainable from the automobile accident reparations system with a view toward internalizing automobile accident loss costs by making automobile insurance the primary benefit source whenever feasible. The Guaranteed Protection Plan generally conforms to this principle. Basic benefits under the auto policy are primary, for the most part, and tort recoveries also are primary with the usual exception of workmen's compensation benefits.

5. The fifth principle is that maximum choice should be afforded the motorist in selecting his insurance source provided the coverage complies with the principles for the required minimum mandatory coverage. With more than 800 insurance companies currently writing automobile insurance, most motorists today already have a very wide choice of insurance sources. In addition, the industry has established automobile insurance plans in every state to guarantee a source of insurance protection to the small percentage of motorists whose high risk characteristics make it difficult for them to obtain coverage in the voluntary market. The Alliance advocates that these plans be expanded to provide physical damage coverages as well as the bodily injury coverages, and that convenient premium financing arrangements be made available. Several states already have taken action to accomplish this result, and other states are expected to follow suit in the near future.

6. The sixth principle is that rehabilitation, avocational as well as vocational, should be a primary function and objective of the compensation system. The Guaranteed Protection Plan's basic benefits cover medical rehabilitation. Optional coverages and tort recoveries offer broader rehabilitation care.

The Alliance proposal also is consistent with Mr. Volpe's suggestion that states might want to experiment initially with a reform plan that would offset the cost of the first-party medical coverage by the savings achieved in revising the rules on general damages. Under the Guaranteed Protection Plan, such cost savings would be produced by imposing limits on the amount of general damages that could be collected for injuries not involving death, disfigurement or permanent impairment. In addition, the provisions requiring car manufacturers to install more crash-resistant bumpers would bring about even more significant savings on the dominant vehicle damage portion of the overall insurance premium.

The Alliance also specifically endorses the finding that "assumption of the present comprehensive state regulatory authority over automobile insurance by the Federal Government would be fraught with great and grave consequences giving rise to issues and problems of great magnitude, and is highly undesirable."

Our differences with Mr. Volpe have to do primarily with matters of timing, and of defining what constitutes a "radical, irreversible change." Mr. Volpe argues persuasively in his testimony that there is an urgent need for experimentation at the state level to clear up major uncertainties about the cost, workability and public acceptability of any new system. He concedes that the DOT does not have definitive answers to these questions, and says that "The experience of the state should have much to tell us about the most desirable final configuration of the motor vehicle reparations system."

Having established that major uncertainties exist, and that experimentation is needed to evolve a final configuration, very little credibility can be given to the DOT's speculations about what an "illustrative" or "ultimate" system might look like. It is inconsistent to call for experimentation, on grounds that the public itself must be allowed to participate in evolving the kind of system that will best serve its needs, and then to suggest a plan which goes beyond the point of no return in the very first stage of implementation.

In his testimony, Mr. Volpe seems to be suggesting that medical and rehabilitation losses be placed on a total no-fault basis immediately, and that the concept of driver accountability be virtually eliminated for such losses by prohibiting subrogation and by restricting payment of general damages to a very small number of serious cases—less than 5% of all auto crash injuries. Income losses and other injury-related economic loss payments would be shifted to a first-party, no-fault basis at a later date. Mr. Volpe indicated that the feasibility of shifting some or all of the losses now being compensated under the third-party property damage liability coverage is more doubtful, in part because there is little opportunity for cost savings in making such a switch, and in part because the DOT is doubtful that a total no-fault system for vehicle damage would be acceptable to the public.

As proposed in the Guaranteed Protection Plan, the Alliance believes it is desirable to take action immediately to guarantee prompt payment of basic benefits for both medical and wage losses—not medical losses only. But all the available evidence indicates that the public will insist on retaining reasonable payments for general damages to innocent crash victims, and will insist that the principle of driver accountability also be preserved. Our Plan provides an efficient means of determining driver accountability through subrogation and arbitration procedures.

We believe the Guaranteed Protection Plan offers crash victims better benefits, and would allow for a more orderly testing of public sentiment. The people affected by changes in the reparations system need to be able to see and make judgments about what they would gain and lose as the balance is shifted toward greater use of no-fault coverages. Our Plan also will provide a more feasible means of testing to what extent the public is willing to forego compensation for personal injury damage not measured by out-of-pocket economic losses.

The Alliance has strong doubts about the public acceptability of shifting all vehicle damage to a no-fault basis, now or later. The motorist whose car is smashed by a negligent driver today is entitled to full payment for the repairs under the other driver's property damage liability coverage. But under a total no-fault system, the owner of the smashed car would not be able to collect anything from the negligent driver, and would have to pay the loss out of his own pocket or, at a minimum, pay the amount of the deductible under his own collision coverage.

One major reason for taking an evolutionary, experimental approach is the uncertainty that exists with regard to what Mr. Volpe calls the "unknown and essentially unknowable" price and cost implications of any major change in the system. The hazards of enacting major new benefit programs without such experimentation are well illustrated by the experience with Medicare. When Medicare was introduced in July, 1966, the cost of Part B was \$3.00 per month, with equal contributions by the U.S. Government. In April, 1968, the cost was increased to \$4.00 per month, and on July 1, 1970 the cost went up to \$5.30 per month. A further increase on July 1, 1971 brings the monthly premium to \$5.60 per month—an 86.7% increase in five years.

Medicare Part A also has been forced to pass higher costs on to senior citizens by increasing the deductible. It was \$40 originally, then was increased to \$44 in January 1969; to \$52 in January 1970; to \$60 in January 1971. That's a 50% increase in the deductible in five years. The Medicaid program suffered even more severe cost overruns, forcing Congress to cut back the scope of the program and take away benefits from certain groups who had previously been eligible for benefits.

IV. GUARANTEED PROTECTION PLAN: COMPATABILITY WITH CONSUMER ATTITUDES

One of the major considerations involved in assessing the practical and political feasibility of any new automobile reparations system is public acceptability. How do American consumers feel about some of the ideas that have been suggested for changing the auto insurance system? Does the public consider fault to be an outmoded concept? How would accident victims feel about giving up compensation for general damages? What do consumers consider to be the real causes of rising auto insurance rates? What steps would they like to see taken to reduce cost? How do they feel about the considerations used in raising or lowering auto insurance prices for particular groups and individuals?

Any new auto reparations system must be based on satisfactory answers to these and other questions if it is to earn public understanding and acceptance. Yet the whole subject of public acceptability has been largely ignored in much of the public discussion of ways to reduce auto insurance costs and to reform the reparations system. As an advisory committee noted in a report for the Department of Transportation: "The largest single gap in knowledge about the motor vehicle accident compensation system concerns the people in it and the impact of the system upon them. Their perceptions, beliefs, attitudes, and behaviors are the subject of much speculation, supported by very little factual data."

This uncertainty about public acceptability is one of the major reasons why an experimental approach is urgently necessary. It is easy enough to criticize the shortcomings of the present system. But there is no assurance that a radical switch to an untried new system would bring instant consumer satisfaction, either.

In designing the Guaranteed Protection Plan, the Alliance has conducted major research into the questions of public attitudes, and has tailored the various proposals accordingly.

All of the available evidence indicates that the American public attaches considerable importance to the concept of driver responsibility for injury done to another. There is a growing demand in our society for more—not less—personal accountability and responsibility. This was demonstrated in a major national study of the attitudes and feelings of people who buy auto insurance, conducted by Market Facts, Inc., largest consumer survey firm in the nation. Market Facts specializes in marketing research and in the measurement of consumer attitudes. Included among its clients are the Columbia Broadcasting System, *Life Magazine*, U.S. Steel, the Ford Motor Company, the U.S. Department of Agriculture, the Social Security Administration and the U.S. Department of Transportation.

1. Consumer attitudes toward driver responsibility for accidents

To find out how people feel about the causation of auto crashes, the interviewers in this survey asked a carefully drawn national probability sample of 1,494 car owners the following question:

"Let's talk for a minute about auto accidents and why they occur. Please think about your own experience and other accidents you know of—and consider whether these accidents could be avoided and how they could be avoided." Then respondents were given a card showing four alternative answers and were

asked which statement came closest to how they feel. The overwhelming majority, more than 9 out of 10, believe that most auto crashes are someone's fault. More than half feel that almost *all* accidents are someone's fault, if the facts are carefully studied.

Driver responsibility for accidents

	<i>Percentage of respondents</i>
Almost all accidents are quirks of fate and no one is to blame-----	2.0
Most accidents are unavoidable. They are unfortunate, but inevitable----	6.0
Most accidents are the fault of drivers. Someone is to blame-----	40.3
Almost all accidents are someone's fault if the facts are carefully studied -----	50.8
No opinion-----	.9

It's interesting that Professors Keeton and O'Connell also feel that the fault concept cannot be eliminated from the auto accident reparations system. In their book, titled "After Cars Crash," they have these comments on the need to retain the concept of making the wrongdoer pay:

"The public believes in that principle strongly enough that they would seriously object to any system that tried to do away with it completely. Many proposals that would have abolished altogether the role of fault in traffic cases just never got anywhere."

The Guaranteed Protection Plan is a reasonable balance between the objective of encouraging driver responsibility, and the objective of compensating accident victims promptly and fairly. All auto accident victims, except those which may be excluded as a matter of public policy, would receive prompt payment of their basic economic losses, and those who are injured by a negligent motorist would also retain the right to collect additional compensation from the wrongdoer. In addition, the consequence of the accident would be recorded against the insurance record of the negligent driver through subrogation procedures. This makes possible a rating system which brings to bear the financial consequences of a negligent act on the person who caused the loss.

2. Consumer attitudes toward eliminating "pain and suffering" payments to reduce auto insurance costs

Public attitude surveys and field experiments confirm that auto accident victims who have been injured by a negligent driver are unwilling to give up the legal right to collect for general damages, often inadequately referred to as "pain and suffering."

One of the major objectives in conducting the Market Facts survey was to find out whether consumers really understood what they were being asked to judge when they were asked questions about giving up payment for something called "pain and suffering." Several previous polls, including the one conducted by the University of Michigan for the Department of Transportation study, have used this term without any definition of what it means.

Respondents were first asked, "Sometimes we read about payments from auto insurance companies to individuals for 'pain and suffering.' What does the term 'pain and suffering' mean to you? What do you think these payments would cover? Anything else?"

The answers were quite revealing. The public had a wide variety of definitions, many of them erroneous. Many others were vague and uncertain. These results cast serious doubt on the validity of any survey that uses the term "pain and suffering" without explaining what it means in the context of auto insurance claims.

After respondents had been given an opportunity to volunteer their personal definitions of the term, it was explained that "pain and suffering," in the insurance sense, refers to payments made for disability, disfigurement, permanent impairment of bodily functions, inconvenience, discomfort, and other damages that go beyond such tangible economic losses as doctor bills, hospital bills, and lost wages.

This survey is believed to be the first study in which people were given explanation of what they would be giving up if no compensation were provided for "pain and suffering." Having been given this explanation, respondents were then asked to consider the following question:

"Suppose that the cost of auto insurance could be reduced somewhat by eliminating 'pain and suffering' coverage from all policies. Policies would be limited to covering 'economic' losses such as doctor bills, hospital expenses, and lost wages or salary. How would you feel about the idea of cutting insurance somewhat by eliminating 'pain and suffering' payments?"

About 65% opposed this idea and 27% favored it. Among respondents who had previously filed an insurance claim, more than 70% were opposed and 23 favored it.

CONSUMER ATTITUDES TOWARD ELIMINATING "PAIN AND SUFFERING" PAYMENTS TO REDUCE AUTO
INSURANCE COSTS

	Total	Have filed claims	Never filed claims
Opposed (percent).....	64.7	70.2	62.3
In favor (percent).....	27.3	23.1	29.1
Don't know.....			
No answer (percent).....	7.9	6.7	8.6
Number of respondents.....	1,494	463	1,024

This opinion survey was corroborated by an actual field experiment conducted by the Alliance over a full twelve-month period in the Syracuse and Rochester areas of upstate New York, and in several counties on the western edge of Chicago.

The 16 participating companies, representing a broad cross-section of the auto insurance business, gave third-party bodily injury liability claimants a choice of how they wanted their claims to be handled. They could collect all of their medical expenses up to \$5,000, plus wage benefits equal to about 105% of their losses, to be paid promptly as the losses accrued. Or they could reject this alternative and pursue a regular liability claim.

Some 2,890 auto accident victims took part in the experiment—587 in Illinois and 2,303 in New York. The major finding is that, given a choice between the guaranteed benefits offer and the payment available under the existing auto liability system, 25% of the eligible claimants elected to accept the alternative benefits in the Illinois experiment and 15% elected the alternative benefits in the New York experiment. (Exhibit 1)

We certainly do not consider these results the final, authoritative answer on public acceptance of any new system. We do think it indicates that people who have been injured by a negligent driver expect to be paid something above their medical and income losses. The more serious the injury, the less interested they were in settling on an economic loss basis.

Another insight on this issue comes from the experience of Preferred Risk Mutual, an Iowa company, which has added no-fault wage and medical benefits to its auto insurance policies. We are told by an official of the company that many of their policyholders decline to accept the first-party benefits and file a claim against the other driver, feeling that the driver at fault ought to pay for the damage.

3. *Consumer attitudes toward a total "no fault" plan*

The Guaranteed Protection Plan recognizes the fact that auto insurance policies sold today make extensive use of both "fault" and "no-fault" coverage. Both concepts would be retained. Payment of benefits to auto accident victims would be made considerably less dependent on fault determinations, but the idea of determining responsibility for the accident would be retained for purposes of insurance rate determinations and for payment of damages that go beyond basic economic losses.

The Plan is based on the premise that the public does not have as yet any well formulated opinion about the merits of a total no-fault automobile insurance system. Mr. Jay Schmiedeskamp, who helped conduct the University of Michigan study on public attitudes for the Department of Transportation, was perhaps more candid than he intended to be when he told a CPCU Clinic in Des Moines that "Existing attitudes toward the no-fault plan can be summarized very quickly—namely that there aren't any because it doesn't exist." He went on to say that attitudes toward a no-fault plan might change if one were actually put into effect. (Please see Exhibit 2 for a critique of the DOT's Public Attitudes study.)

However, some insight into the current state of public opinion on this issue can be obtained from the Market Facts national survey. After testing the respondents to find out their understanding of the term "pain and suffering," interviewers asked the following questions.

"Now I'd like your opinion on a new idea that's being talked about these days. The idea is to change the auto insurance system so that a person in an accident would go to his own insurance company for payment as is done with fire and health insurance.

"The question of who was 'at fault' in the accident would not be considered in the payment of claims. Those responsible for an accident would have the same coverage and protection as those who were without fault.

"Under this new system, those in accidents would be reimbursed for expenses they incurred because of the accident, such as medical bills, repair bills and lost wages. However, under this new plan no payments would be made to anyone for 'pain and suffering' losses such as those we just talked about. Do you tend to favor or tend to oppose this new system?"

With this understanding of a "no-fault" plan, about 6 out of 10 consumers were opposed. Among those who have had experience with the existing claims payment system, almost two out of three were opposed.

CONSUMER ATTITUDES TOWARD TOTAL "NO-FAULT" PLAN—PERCENTAGE OF RESPONDENTS

	Total	Have filed claims	Never filed claims
Opposed (percent).....	57.9	65.5	57.4
In favor (percent).....	31.3	26.5	33.6
Don't know (percent).....	9.0	8.5	9.2
Number of respondents.....	1,494	463	1,024

A followup question was then asked of those who were opposed, as follows:

"If the new plan cost less, would you favor it or still oppose it?"

More than 7 out of 10 of those who opposed the plan said they would still oppose it, even if it were to cost less. Thus, it is clear that most auto insurance buyers reject the no-fault principle as described to them in this survey—and even the prospect of lowering insurance costs would not change the minds of the majority of those in opposition.

4. Consumer attitudes toward making auto insurance a "Last Resort" coverage

Since some of the "no-fault" proposals that have been made called for offset of other available benefits, consumers surveyed in the Market Facts project were asked to evaluate that idea with this question:

"A different plan is to have auto insurance pay only for injuries after the injured person has used up any benefits he may have received from his other insurance such as Blue Cross, union benefits, sick leave or salary continuation plans. Generally speaking, do you think such an idea would be a good idea or not too good an idea?"

About two-thirds of the consumers interviewed felt that such a plan would not be "to good an idea." Again, the opposition was noticeably stronger among those who have had direct experience with auto insurance claims. More than 70% of them turned thumbs down. It's interesting that about 6% were perceptive enough to point out that they might exhaust their sick leave or health insurance and then be left without coverage if they had a subsequent illness or injury not caused by an auto accident.

5. Consumer attitudes toward merit rating

Although the Guaranteed Protection Plan does not deal directly with rating matters, the type of auto reparations system ultimately adopted will have major implications for rating. For example, it would be difficult if not impossible to devise an acceptable "merit rating" plan under a system based on a categorical rejection of the fault concept. Actuarially, a drivers' past accident record is a good indicator of his probable future accident frequency. And there is strong public support for the idea of charging higher rates for accident-prone drivers and lower rates for those who are safe drivers.

However, it is also clear that most people are adamantly opposed to being surcharged because of their involvement in an accident which was not their fault. Yet how is fault to be determined under a system which rejects the whole idea of

fault. If proponents of total no-fault plans remain true to their convictions and ignore fault entirely, will the majority of safe drivers be content to pay surcharges when they are involved in accidents caused by negligent drivers? And if the fault concept is smuggled back into the pricing of insurance, why is it not also a valid concept to use in the settlement of claims?

It's interesting to note that when the Market Facts interviewers asked car owners for any suggestions they may have as to the responsibilities of the insurance industry for reducing auto insurance costs, the most frequent suggestion volunteered was that insurance companies follow the "merit rating" concept, with high rates for poor drivers and lower rates for good drivers. About 1 out of 4 respondents volunteered this suggestion.

6. Consumer attitudes on the causes of rising insurance costs

It is clear from public opinion polls, newspaper articles and other evidence that the public is concerned over rising auto insurance costs. However, this concern is by no means concentrated on the bodily injury portion of the auto insurance premium. In fact, it appears that car owners have a surprisingly clear understanding of the factors that are driving up auto insurance costs—and some strong ideas on what should be done to solve what they perceive as the real problems.

To put the cost issue into perspective, Market Facts interviewers asked respondents to consider a "deck of shuffled cards," listing things which might or might not contribute to high auto insurance rates. They were asked to sort the cards into piles according to how they felt each thing contributed to high insurance rates, if at all. The four piles were labeled (1) a great deal, (2) somewhat, (3) a little, and (4) not at all.

By far the most important contributing factor, in the opinion of consumers, is "too many reckless drivers." Nearly 78% said this contributes a great deal to higher insurance rates. Next in order of magnitude are three characteristics having directly to do with automobile design: high power, fragile bodies, and expensive-to-fix bodies.

Several additional questions were asked about auto design and about so-called "muscle cars," defined as cars that will accelerate to 60 miles per hour in less than 8 seconds. About 8 out of 10 respondents said cars should be designed to reduce repair costs, even if this makes cars less stylish in appearance. This strong feeling is especially significant in the light of other recent evidence that the high cost of auto repair has become the major factor pushing up the cost of auto insurance.

Factors which contribute "a great deal" to higher auto insurance costs

	<i>Percentage of respondents</i>
Too many reckless drivers—irresponsible, lawless, or drunken drivers-----	77.9
Cars with too much power and speed—new high acceleration "racing" models -----	61.9
Car bodies which are easily damaged—fragile, not sturdy-----	57.4
Car designs which are expensive to fix because of "sculptured" bodies, unitized construction, etc.-----	53.4
High prices from repair garages-----	48.0
Too many unskilled drivers—poorly trained or inexperienced-----	50.2
Cars designed with ornamental bumpers that don't prevent damage-----	51.1
Small dents and minor damages cost too much to repair-----	46.9
Too much congestion on roads—too many cars-----	46.4
Traffic laws not enforced enough—too few arrests; sentences are too light-----	31.6
Roads not designed for safety; not properly marked, lighted, repaired, etc..	29.9
Procedures of automobile insurance companies are inefficient-----	17.1

In summary, the Guaranteed Protection Plan has been designed so as to recognize what is now known about public attitudes toward the major issues involved in reforming the auto reparations system. More important, the Plan has been designed so as to permit an orderly public test of consumer reactions under actual operational conditions. It is not an irreversible change, as would be the case in a switch to a total no-fault system. Policymakers would retain many different options for modifying, speeding up, slowing down or altering the direction of change on the basis of actual experience under the new system. This would permit the public itself to help evolve the kind of auto reparations system which it feels will best serve its own needs and purposes.

V. UNIFORM MOTOR VEHICLE INSURANCE ACT

The merits of the Guaranteed Protection Plan are perhaps best illustrated by comparison of its features with those of the so-called Uniform Motor Vehicle Insurance Act, now under consideration by this committee.

The Guaranteed Protection Plan represents a responsible, evolutionary approach to auto reparations reform—one that allows the affected public and policymakers alike to test out the workability of the Plan. By contrast, the Uniform Motor Vehicle Insurance Act is a risky leap into the dark, representing a drastic, irreversible change in the system. In the course of our critique we will point to a number of shortcomings in both the philosophy and practicality of the Plan. We believe it would create inequities so severe as to make it unacceptable to the public.

1. *Unresolved problems*

One of the most serious shortcomings of the proposal is its incompleteness. The bill draft leaves many questions unanswered and many serious problems unresolved.

The public is not being well served by being left in the dark about these unresolved issues. There is wide appeal in a plan which seemingly promises something for everybody with no controversy. But it is the obligation of this committee not only to examine these promises—which have been prominently publicized in the press—but also to examine the unresolved problems created by this proposal.

Specifically we think people have a right to know what their rates would be for the compulsory coverages, what additional coverages would be needed and what they would cost, what costs they would have to pay out of their own pockets, which claims would be paid and not paid under the proposed new form of insurance. People also have a right to know about the uncertainties, delays, frustrations, inequities, controversies and litigation which this Plan would generate.

For example, our claims people foresee major difficulties and legal controversy in determining how much to pay large numbers of auto accident victims under this Plan. The bill provides for income replacement in an amount equal to 85% of the accident victim's monthly earnings at the time of injury, or \$1,000, whichever is less, for as long a period (up to 30 months) as the injury causes the inability to engage in gainful activity substantially the same or similar to that engaged in prior to the injury. The bill further provides that if the injured person worked substantially the whole year immediately preceding the injury, the income loss will be based on those previous earnings. If the injured person had just taken a new job, the loss would be computed on the basis of what a person doing similar work would have received during the immediately preceding year.

Several aspects of this issue are troublesome. One is that 55% of the persons injured in auto crashes are not wage earners at the time of the accident. These include minor children, housewives, students and retired persons. Many of these persons expect to enter or re-enter the work force at some future date, or to earn supplementary income in some way. But under the Uniform Motor Vehicle Insurance Act there is no way they can collect for any harmful effects an auto injury may have on their future earning capabilities unless they are totally disabled or can demonstrate that they have suffered permanent partial disability exceeding 70%.

The inequity is even more immediate and glaring in the case of the unemployed. Let's take the case of the thousands of aerospace workers now temporarily out of work, or the workers who were furloughed during the 1970 business slowdown and have not been rehired, or the construction workers who are seasonally unemployed. Under this federal bill, such persons would not be eligible for any wage benefits on a no-fault basis. Nor would they have a right to seek a tort recovery for future wage losses unless the suffered permanent disability exceeding 70%.

This raises additional unresolved problems. How is "disability" to be defined? Does it mean industrial disability—i.e., impairment of the injured person's ability to perform gainful employment? Or is it limited to actual wage impairment? Or does it mean medical disability—i.e., physical impairment without reference to what this may mean in terms of the person's earning capacity? Does it include mental and emotional disability, or not?

Assuming a definition is devised, how is the extent and duration of disability to be measured? In the absence of any provision in this bill, these issues presum-

ably would have to be resolved in the courts. It is interesting to note that in Texas, where workmen's compensation claims are court-administered, the judiciary is burdened with several times more workmen's compensations disputes than auto liability claims.

Serious problems of malingering would be likely to arise under a system which withholds compensation for serious bodily harm unless the injured person can prove that the language is permanent and has resulted in more than 70% disability. Such problems are a major cause of concern under the workmen's compensation system, despite the many limits and safeguards built into that system but omitted from the proposed Uniform Motor Vehicle Insurance Act.

Such safeguards include administrative procedures and tribunals for determining the degree and duration of disability, and the active involvement of an employer in investigating the accident and in following through with the medical treatment, rehabilitation and return to work of the injured employee.

Similar uncertainties and unresolved problems exist with regard to the definition of "disfigurement," and how it is to be measured.

2. *The seriously injured victim*

Much of the publicity for the Uniform Motor Vehicle Insurance Act focuses on the plight of the seriously injured crash victim. Proponents have severely criticized the present system for its alleged failures to provide adequate compensation for such persons, and have promised that their plan would provide "almost total compensation."

Both the criticisms and the promises are somewhat inaccurate and overstated.

For example, in a news release issued February 24, 1971, Senator Hart said flatly that the "present system . . . provides auto victims with only 16% of their out-of-pocket losses." Subsequent inquiry reveals that this statistic is based on mismatching data from two different studies, and deals solely with the lifetime economic losses estimated for a tiny group of persons suffering permanent and total disability. It is not, as the news release erroneously implies, an indication of how the present system performs for all auto accident victims, or even for all of those defined as "seriously injured."

The DOT's study of seriously injured crash victims likewise contains a misleading picture of how the auto reparations system performs. The document titled "Economic Consequences of Auto Accident Injuries" is erroneously thought to show that some 500,000 persons categorized as "seriously injured" in 1967 auto crashes recovered only half of their economic losses.

But a radically different picture emerges when the data are examined in detail. In the first place, the survey did not involve 500,000 persons. It involved a sample of 1,376 persons, which the report itself concedes to be unrepresentative of the auto accident population generally. The document also is replete with warnings about the "speculative nature" of the projections of future economic losses (Vol. 1, p. 24), the "substantial" errors in classification (Vol. 1, p. 24), the "arbitrary" criteria used in defining serious injury (Vol. 1, p. 17), and the flat admission that " . . . the study does not provide reliable estimates of aggregates" (Vol. 1, p. 15). Yet all of the DOT's highly publicized conclusions about the amount of economic loss incurred by auto accident victims, and about the amounts of compensation received from various sources, are based on the "aggregates" which the report says are unreliable.

Even if the figures are taken at face value, a detailed study of the tables leads to different conclusions than those which have been widely publicized. It reveals that nearly all of the so-called "uncompensated compensable economic loss" stems from a small core of catastrophic situations. (See Exhibit 3.)

The startling fact is that 121 persons accounted for 94% of the uncompensated economic losses which the DOT subsequently blew up into billion dollar estimates purporting to measure the "compensation gap." This small group—the "catastrophic few" estimated to have incurred losses exceeding \$25,000—represents only 8.8% of the DOT's real-life sample of 1,375 crash victims, and fewer than 1% of all auto crash victims.

This means that the other 91.2% of the seriously injured group were compensated for all but 6% of their economic losses, as a group.

These findings have great significance in assessing both the present reparations system and the various reforms being proposed.

For example, most of the uncompensated economic loss reported for the "catastrophic few" consisted of future wage losses extending far beyond the 30-month cutoff period found in the Uniform Motor Vehicle Insurance Act. This means the proposed federal bill will fall far short of providing "almost total

compensation" for the group of crash victims which accounts for 94% of all the DOT's estimated "uncompensated compensable losses."

The Act proposes to deal with this problem by preserving the right of tort recovery for survivors in death cases and for persons who are more than 70% disabled. But this is rendered largely meaningless by other provisions prohibiting the states from requiring drivers to carry any form of liability insurance to pay for such losses. The high-risk drivers most likely to cause such injuries are the ones least likely to voluntarily purchase liability insurance if existing state financial responsibility laws are abolished, as Senator Hart proposes.

Moreover, the person who has suffered a serious crash injury—a spinal cord injury, for example—will be faced with a cruel choice under this federal bill. Its provisions create a serious disincentive for rehabilitation in the cases most desperately needing rehabilitation care. Many months normally elapse in such cases before the degree of disability is stabilized. In the meantime, the injured person will be left in uncertainty as to whether he will be able to pursue a tort recovery. Should he retain an attorney, and begin preparing his case while witnesses are available, or wait to see if his disability will exceed the 70% level? In some states, the statute of limitations on filing a claim or a lawsuit may run out before he knows the answer. This gives the injured person a strong financial incentive to regard himself as permanently and totally disabled, and to be classified as such as quickly as possible. How many seriously injured persons, facing an uncertain future, can afford to do otherwise—particularly if he has a family dependent on him for support?

The Uniform Motor Vehicle Insurance Act also creates serious inequities for the much larger group of seriously injured crash victims who suffer permanent disabilities below the 70% level. These unfortunate victims would receive no compensation at all for going through life with some rather serious impairments.

Under the disability rating systems commonly in use today a person may suffer loss of limbs, serious loss of bodily function, deformity, recurring pain and other severe personal damage without being considered 70% disabled. For example, the amputation of an arm is considered a 60% disability of the body as a whole under the American Medical Association's "Guides to the Evaluation of Permanent Impairment." Partial paraplegia also carries a 60% rating so long as the person is able to walk without braces and has complete bowel and bladder control, despite the fact that he may be unable to pursue his previous occupation. In the case of workers who earn their living by manual labor or other jobs requiring physical exertion, disabilities well below the 70% level can mean a drastic change in income for the rest of their lives, in addition to the personal anguish imposed on them and their families.

Or consider another type of disability rating under the Labor Code of the State of California. California's "Schedule for Rating Permanent Disabilities" rates a complete loss of speech as a 50% disability. The loss of sense of taste and smell is considered a 10% disability. The loss of a thumb and all fingers on one hand is a 55% disability.

There is no completely satisfactory answer to this problem. But at least the Guaranteed Protection program offers *everyone* who has been injured as a result of someone else's irresponsibility an opportunity to recover full economic losses and general damages for the harm done to the quality of life he may expect as a result of a permanent injury. Under the Uniform Motor Vehicle Insurance Act, large numbers of these permanently impaired victims would not even be entitled to full recovery of their economic losses.

3. General damages

It is argued that general damages should be excluded from compensation because they are subjective in nature and are not susceptible of objective measurement in dollars. Yet the same thing is true of a great many things in this world. How much is a man's time worth, and how is its value determined? Why do we pay higher wages for overtime, night work and holidays, and how is the differential arrived at? How do we determine the value of a piece of real estate condemned for a highway?

All of these things are subjective in nature. Yet we manage to translate them into dollar amounts by a process of bargaining and compromise. Our society not only is capable of translating subjective values into dollars—it insists upon it, and considers it one of the distinguishing features of a democratic society. We do it every time we negotiate a wage settlement, sign a contract, buy a house or hire the neighbor's kid to mow the lawn.

Auto accident victims insist upon it also. People who have been injured by a negligent driver expect to get paid something for their trouble, pain and in-

convenience. Those who have suffered a permanent impairment such as loss of speech or all of the fingers of one hand are even less likely to be satisfied with being paid nothing more than their net economic losses.

4. Delay

One of the major promises made for the Uniform Motor Vehicle Insurance Act is that it would provide prompt payment. However, the features which makes other benefit sources pay first would tend to create considerable delay in payments by the auto insurer. This would result because the auto insurance policy would be intended to pay only those amounts left unreimbursed after all other benefits had been offset. This would require that the auto insurer determine not only the existence of other collateral benefit sources, but also find out to what extent they had overlaps, deductibles, coinsurance provisions, dollar limits, exclusions and other features affecting the amounts payable. Accident victims usually would be unable to provide such information until other benefits had been actually received. With the auto insurer being "last in line" to pay, any delays in the payment of benefits by other sources would tend to delay the payment of auto insurance.

Moreover, the bill provides no safeguards to prevent concealment of collateral sources, tax deductions, second jobs and other information which would have to be taken into account in settling claims.

We reject this approach in structuring the Guaranteed Protection Plan for several reasons. First of all, it is unfair to the prudent man who has provided other forms of protection for himself and his family. Why should this man be denied payment under his auto insurance policy, while the persons who has not obtained other coverages would collect? In the case of employee benefits such as group health insurance and wage continuation plans, spokesmen for organized labor regard these union negotiated benefits as compensation received in place of additional wage income. For this reason, total no-fault plans have run into stiff opposition from labor groups in several states as soon as they took a close look at the plans and found out what it would do to their members.

Quite aside from the attitudes of labor and management, why should other benefit systems—private or public—be saddled with the burden of subsidizing highway accidents? As a matter of public policy, motorists as a group ought to pay their own way for the accidents and injuries they caused. We believe it is in the public interest to keep these auto accident costs visible, instead of hiding them by passing on a large part of the expense to taxpayers and purchasers of other insurance coverages.

5. Who is left out?

In numerous hearings over the past three years, and in the steady barrage of press releases issued in behalf of this proposal, major emphasis has been placed on the fact that some auto accident victims fail to receive any compensation under the auto bodily injury liability coverage, and that seriously injured accident victims are sometimes not compensated in full for all of their economic losses. Careless use of such terms as "the present system" and "the fault system" seem almost calculated to mislead the casual reader into thinking that auto accident victims have no other source of recovery under the present auto insurance system other than by proving that they were totally innocent and the other driver was totally at fault.

In fact, the bodily injury liability coverage is not designed to cover all injuries occurring on the highways. For example, it is not designed to cover the approximately 25% of all auto crashes involving single vehicles, except to the extent that guest passengers have a cause of action against the negligent driver of the car in which he was riding. A majority of these single vehicle crashes involve only the driver, and of course the liability coverages are not designed to pay for such cases.

However, about 70% of private passenger vehicle owners carry medical payments insurance, which pays on a first-party, no-fault basis, even in single vehicle accidents and in cases where the injured person was at fault. Vehicle owners also can purchase first-party, no-fault collision insurance to cover any damage to their own cars, regardless of fault. Thus it is misleading to imply that "the present system" is incapable of providing compensation for crash losses.

If critics of the present system insist on looking only at the statutory coverages, then it is fair to ask how many accident victims would not get paid under the statutory coverages which they propose. Under the Uniform Motor Vehicle Insurance Act, very large numbers of auto accident victims would receive nothing

at all from the compulsory personal injury coverages. Nobody would collect for damage inflicted on his automobile under the statutory coverages. Many of those who have wage continuation plans, sick leave or nonwage income wouldn't collect anything for their lost work time. Those who have health insurance or other medical benefits wouldn't collect from their auto insurance for these expenses either, unless these collateral sources specifically provided that the benefits are secondary to auto insurance.

No doubt it will be argued that these losses are covered by other benefit systems. But the same argument can be made today. The point is, both the present statutory auto insurance coverages and those proposed under this federal act are designed deliberately to leave out certain categories of claimants—and the group left out is much larger under the federal proposal than under the present system.

The Guaranteed Protection Plan would provide broader protection than either the present system or Senator Hart's proposal. It would cover a far larger number of accident victims, and provide benefits more promptly, than the auto insurance coverages specified in the proposed Uniform Motor Vehicle Insurance Act.

6. Coverage gaps

Another major flaw in the Uniform Motor Vehicle Insurance Act is the provision which would strike down existing state financial responsibility laws. The Plan not only does not cover property damage—it also prohibits states from requiring or strongly encouraging drivers to carry property damage liability for the damage they may inflict on other vehicles. As a practical matter, this means that people whose cars are smashed by negligent drivers are unlikely to be able to collect.

Owners of other property such as houses, commercial property also would find it much more difficult to collect from negligent motorists than is the case today under state financial responsibility requirements.

Third, people who suffer catastrophic harm at the hands of negligent motorists are likely to find their right to sue largely meaningless, since there is no requirement or sanction on vehicle owners to insure against this liability. All insurance companies would be required to offer such residual liability coverages to their policyholders, but it is quite likely that a high percentage of the most accident-prone segment of the driving population would not purchase it if existing financial responsibility laws are abolished.

7. Is negligence still relevant?

If the Congress enacts the Uniform Motor Vehicle Insurance Act, it will be saying as a matter of public policy that a negligent driver no longer is responsible for the injury and damage he inflicts on other people. The idea of abandoning responsibility is based in part on the assumption that auto crashes are really nobody's fault—that they are more or less random events, the inevitable consequence of a motorized society. But there is strong evidence to the contrary. A startling high percentage of all serious auto accidents involve flagrant driver negligence.

Improper driving is a factor in about 9 out of 10 fatal and injury-producing accidents, according to reports of state and city traffic authorities.

Drinking is the dominant factor in highway fatalities. Studies published by the DOT indicate that drinking plays a part in at least half of the 55,000 annual highway deaths—and in more than 800,000 injuries a year.

Additional evidence on the role of driver negligence is found in a report prepared by the National Highway Accident and Injury Analysis Center of the United States Department of Transportation. Out of 217 accidents studied, 612 factors were identified as contributing to the occurrence of the accidents. These included vehicle defects, roadway defects, bad weather and a variety of other factors.

But 422 of the 612 "accident causation" factors involve human error. And a high percentages of these accidents involve flagrant driver negligence.

In 104 cases, for example, the driver was intoxicated or had been drinking.

In 81 cases, the driver was speeding or going too fast for conditions.

In 19 cases, the driver went through a red light or stop sign.

In the light of all the evidence that has been gathered, the American Mutual Insurance Alliance believes that driver behavior is still a highly relevant factor to the innocent victims who are maimed and to vehicle owners whose cars are smashed as a result of someone else's carelessness. The Guaranteed Protection Plan is based on the premise that driver negligence is still relevant, and must be taken into account to some degree in any reparations system likely to win public approval.

8. Efficiency of the auto insurance system

The Alliance agrees with proponents of various auto insurance reform plans that one objective of reform should be to make the auto insurance system more efficient, and to return a greater percentage of the insurance premium dollar to accident victims.

However, some of the public statements issued on this subject create an erroneous impression of the relative efficiency of liability insurance as compared with other forms of insurance.

As indicated in Exhibit 4, the cost of delivering benefits under the auto bodily injury liability coverage does not differ greatly from the cost of delivering benefits under the homeowners policy, which consists largely of no-fault coverages. Some 76.6% of the bodily injury liability premium dollar is returned in the form of cash benefits (62.5%) and loss adjustment services (14.1%). A portion of the latter would be reduced under the Guaranteed Protection Plan, and the amounts now expended for lawsuits would be reduced as well. However, someone will still have to determine the amount of the loss and conduct the settlement process under any type of system.

Please note also that the property damage liability coverage in 1969 returned about 75 cents out of each premium dollar in the form of cash payments for auto repair or replacement.

9. Imposition of Federal Regulation of Insurance

One of the most glaring shortcomings in the Uniform Motor Vehicle Insurance Act is the damage it would do to existing regulatory bodies and to the orderly processes of one of the nation's major industries. For all practical purposes, the bill would abolish state regulation of insurance and superimpose a system of federal regulation under the Secretary of Transportation. As Secretary Volpe himself pointed out in his recent testimony, federal assumption of regulatory authority over automobile insurance would be "fraught with great and grave consequences given rise to issues and problems of great magnitude, and is highly undesirable."

Such an assumption of federal control would be justified only if the states had utterly failed in their job, and there was a reasonable expectation that federal regulation somehow would be immune from the same failings. We see no credible evidence that either of these conditions prevail. There is nothing in the history of the federal regulatory system to instill confidence that federal regulation of insurance would be, on the whole, more efficient than the present state regulatory system. The shortcomings of federal regulation are well documented in a recent book by Pulitzer Prize-winning author Louis M. Kohlmeier, Jr., titled the *Regulators*. As the jacket succinctly puts it, the book "sheds new light on how the federal regulatory agencies have failed in their purpose—to protect the American consumer." We note that Senator Hart, the principal author of the Uniform Motor Vehicle Insurance Act, has strongly endorsed this book.

The Congressional Record is full of official and unofficial criticism of federal regulatory agencies for their dilatory procedures, their inflexibility, their lack of independence and competency. As a consequence, the public has suffered and the affected industries have suffered. There is at least a reasonable presumption that hide-bound federal regulation is a major contributor to the financial plight of the nation's railroads and airlines and the problems of power and energy shortage with which we are now confronted.

Insurance remains one of the most diverse businesses in the nation. In most respects, it is still a local business, built on local bases and serving local needs. The Alliance believes that the regulation of insurance must recognize and respond to this diversity.

Some critics have spoken of diversity in regulations among the 50 states as though it were prima facie evidence that something is wrong. It is, in fact, evidence that the states are carrying out their intended and constitutionally guaranteed function of serving the diverse interests of their own citizens. To argue that there is something abhorrent, per se, about differences in laws among the various states is to quarrel with the whole concept of federalism and the legitimacy of individual states having independent powers and responsibilities.

The Guaranteed Protection Plan advocated by the Alliance would provide a compatible, rational system in which differences in benefit levels and other aspects of the auto reparations system could be readily accommodated and reconciled as among states.

We take specific note of the fact that an arm of the National Legislative Conference, an affiliate of the Council of State Governments, already has taken action to draft model legislation that would provide a guideline, subject to necessary state variations, for the auto reform plan proposed under the Concurrent Resolution now before this committee.

10. Legal and constitutional problems

The proposed Uniform Motor Vehicle Insurance Act raises a number of legal and constitutional issues.

It is permissible to abolish the right to sue for a bodily injury, and substitute a compulsory requirement that vehicle owner purchase insurance to protect himself?

In the DOT report titled "Constitutional Problems in Automobile Accident Compensation Reform," Professor C. Dallas Sands of the University of Alabama Law School examined the constitutional issues that might be involved in reform of the auto accident compensation system through federal legislation, and concluded that such legislation might well run afoul of the 7th Amendment, which preserves trial by jury under common law.

In any event, the proposal would be certain to generate a substantial amount of legal controversy and litigation, both to define what the statute means and to resolve continuing disputes among the parties to an action and their insurers.

11. Access to insurance

One of the politically popular features of the Uniform Motor Vehicle Insurance Act is the provision that would require auto insurers to accept all applicants for coverage, provided they have a valid drivers license and are willing to pay the premiums. The proposal also would prohibit cancellation except for loss of a driving privileges or nonpayment of premium. This presumably is intended to do away with the need for the existing automobile insurance plans, which provide a source of insurance for motorists who are having difficulty in obtaining coverage in the voluntary market.

However, the actual consequences of such a law are likely to be very different than the objectives which the authors of this proposal have in mind. The most likely result would be to increase the cost of insurance for the vast majority of drivers who now enjoy preferred rates, since companies which attempted to set their rates at a low level attractive to such drivers would be inundated by high risk drivers. Such a plan also would create chaos in the market place, as companies sought to avoid attracting the attention of people from areas known to produce excessive losses. In order to correct these dislocations, the federal regulator would have to become more and more involved in the operational details of marketing insurance—including the appointment of agents, the nature of the advertising done, the availability of visible sales offices, the mailing lists used by those companies using direct mail solicitations, etc.

If the objective is to keep the cost of automobile insurance at an "affordable" level for drivers with above average loss exposure, it would appear that such drivers have more protection under the existing regulatory setup than they would have under the one contemplated in this bill. In New York, for example, where auto insurers are now permitted to use competitive ratings for their voluntary business, the rates for drivers insured in the automobile insurance plan remain under a so-called "prior approval" arrangement. Although drivers insured in the Plan are charged higher rates than those available in the voluntary market, there is a deliberate element of subsidy built into the setting of rates for these high-risk drivers. In other words, they do not pay their own way. Under the Uniform Motor Vehicle Insurance Act, insurance companies presumably would be free to charge these high-risk drivers rates commensurate with their actual loss experience, so that their premiums would be even less "affordable" than is presently the case.

The Guaranteed Protection Plan deals with the problem of insurance availability in a more reasonable fashion. It calls for expansion of the present automobile insurance plans so as to guarantee reasonable limits of protection for both liability and other auto insurance coverages to every licensed driver.

Concrete plans for accomplishing this objective were outlined by the National Industry Committee on Automobile Insurance Plans consisting of representatives of the American Mutual Insurance Alliance and the other two major insurance trade associations, at the 1969 annual meeting of the National Association of Insurance Commissioners in Philadelphia. The necessary changes are now

being put into effect by the various states, either by action of Automobile Insurance Plan governing committees or by legislation.

The Alliance supported these changes and, in addition, would support a program which extends beyond the recommendations of the NIC (which include liberalized eligibility requirements, optional medical payments, physical damage coverage, an installment payment plan, and the new name, "Automobile Insurance Plan"). We also support offering 50/100/25 bodily injury and property damage liability limits of protection and more prompt access to coverage under the plans. However, where higher limits are provided, small insurers without adequate reinsurance arrangements should be protected by the mandatory pooling of limits over the financial responsibility limits.

The insurance industry also has improved the availability of coverages by restricting the right to cancel policies. Since 1967, Alliance member companies have agreed not to cancel any private passenger automobile policy except for nonpayment of premiums by an insured, or suspension or revocation of a driver's license or registration. The Alliance Board of Directors voted to seek legislative enactment of "noncancellation laws" restricting the cancellation of private passenger auto policies, except for the two reasons cited above.

The principal stock and mutual rating bureaus have had in effect for the past six years a program of voluntary restrictions on the right of members and subscribers to cancel private passenger automobile liability policies. As of January 1, 1968, the right to cancel was further restricted to just two allowable reasons: nonpayment of premium, or loss of driving privileges. At the same time, the guarantee against cancellation was extended to other coverages, such as collision, fire and theft.

To make such guarantees effective for all policyholders, some 38 states have now enacted laws providing statutory restrictions on the right of companies to cancel auto insurance policies. The Alliance and other responsible segments of the industry are working to enact similar laws in the remaining states.

12. Changes in rating procedures

Proposals for changes in rating procedures under the Uniform Motor Vehicle Insurance Act would not provide the public with meaningful price information, as its authors apparently assume.

As nearly as we can determine from the somewhat vague and confusing description contained in the bill, it is contemplated that the Secretary of Transportation would publish each company's loss experience in great detail, along with the premiums being charged for each category of driver, rating territory, vehicle type and use, and type of insurance coverage.

The trouble is, this type of data has not statistical validity on an individual company basis when subdivided into so many categories. The loss experience would fluctuate so greatly—from one company to another and for the same company at different time intervals—as to be meaningless and misleading for consumers. This would be especially true of smaller companies. Small companies also would have more difficulty in adjusting to the new system, particularly if—as seems likely—they would be required to perform for themselves many of the services now performed by rating bureaus.

The result very likely would be to promote the growth of large companies at the expense of their smaller competitors, thereby lessening competition and promoting the economic concentration of power in an industry which has remained highly diversified and highly competitive up to now.

VI. THE FEDERAL GOVERNMENT'S ROLE IN AUTO REFORM

The Alliance believes that the Federal Government has a major role to play in reducing the excessive losses now occurring on the highways, and in bringing about an improved compensation system for automobile accident victims. Indeed, the Federal Government already has made major contributions in these areas.

The massive study conducted by the Department of Transportation, plus the hearings held by this committee and other committees of Congress, have made a major contribution to the efforts to reform the automobile accident reparations system. This research, plus the impetus provided by federal interest in this subject, seems likely to assure that the states will move promptly to conduct the necessary experimentation and evolution of reforms in the reparations system. The Alliance has knowledge of reform legislation pending in at least 35 states. Several of these states are considering alternative reform plans.

The Alliance believes the Federal Government has a more active role to play in the reduction of highway losses—through funding of research, the funding of safety programs such as the current alcohol countermeasures program of the DOT, and through the vigorous application of vehicle standards designed to reduce the grossly excessive loss being generated by low-speed damage to vehicles and the unnecessary injuries to vehicle occupants. In this connection, the Alliance supports the pending legislation which would give the Department of Transportation specific authority to promulgate standards relating to vehicle damage as well as occupant safety. We also support the concept of rating cars on the basis of their damageability and repairability.

VII. CONCLUSION

The problems generated by automobile crashes are far more complex than was generally realized when the reform issue first came to general public notice two or three years ago. We believe the ensuing research, debate and soul searching has been productive, and has produced something close to a consensus on the steps that must now be taken to bring about a reformed system and to bring under control the excessive losses. The Alliance has been privileged to play a major role in this search for reform. We pledge to you and to the public our continued efforts to accomplish those objectives.

APPENDICES

Exhibit 1.—Guaranteed Benefits—An Experiment in Auto Insurance Reform.

Exhibit 2.—Critique and Analysis of DOT's "Public Attitudes Toward Auto Reform".

Exhibit 3.—Critique and Analysis of DOT's "Economic Consequences of Auto Accident Injuries".

Exhibit 4.—Chart Showing Percentage of Premium Dollar Returned in Benefits and Services, 1969.

Exhibit 1

[Published by American Mutual Insurance Alliance, Chicago]

GUARANTEED BENEFITS, AN EXPERIMENT IN AUTO INSURANCE REFORM

PARTICIPATING COMPANIES

Allstate; American Mutual Liability; Chubb & Son, Inc.; Continental Insurance Companies; Country Mutual; Economy Fire & Casualty; Employers of Wausau; Great American; Home Insurance Company; Insurance Company of North America; Kemper Insurance; Liberty Mutual; National Grange Mutual; Nationwide Insurance; Sentry Insurance; Utica Mutual.

SUMMARY OF FINDINGS

Given a choice between Guaranteed Benefits and the benefits available under the existing auto liability system, 25 per cent of claimants elected to accept Guaranteed Benefits in the Illinois Experiment and 15 per cent elected Guaranteed Benefits in the New York Experiment.

Persons who had more serious injuries and economic losses were likely to opt for a liability settlement rather than the Guaranteed Benefits offer. The larger the claim, the more pronounced this tendency became.

Claimants who consulted attorneys were much less likely to accept Guaranteed Benefits than those who did not. However, it is not known whether the decision resulted from the attorney's advice or whether the claimant's decision to consult an attorney was, in itself, an indication that he or she had in mind a settlement larger than that provided under Guaranteed Benefits. Retired persons, housewives, the self-employed and rural residents were more likely than other claimants to elect Guaranteed Benefits.

No definite conclusions can be drawn from this experiment regarding the possibility of savings from adoption of the Guaranteed Benefits concept.

BACKGROUND AND OBJECTIVES

The purpose of the Guaranteed Benefits Experiment was to test the reaction of automobile bodily injury liability claimants to this particular alternative method of paying benefits.

At the time the experiment was initiated, in 1968, there had been extensive criticism of the automobile liability insurance system. Numerous proposals had been made for changes in the system which would eliminate some of the uncertainties of a liability claim. The Guaranteed Benefits Experiment was designed to offer liability claimants an opportunity to exchange these uncertainties for the assurance of a known recovery. The benefits were structured so as to offer the injured person a combination of payments which, in most instances, would pay all of his medical expenses, wage losses and other out-of-pocket expenses, plus some additional benefits for permanent impairment or wrongful death. These benefits were to be paid regardless of the fact that the claimant may have had other sources of recovery such as health insurance or wage continuation benefits.

Companies participating in the experiment wanted to know whether claimants having bodily injury claims against their policyholders would be willing to accept these benefits, offered promptly and on a guaranteed basis, or whether they would choose the less certain but potentially higher settlements available if they could prove that the other driver was at fault.

In addition, the companies hoped to gain insight into the cost implications of a Guaranteed Benefits system.

DESCRIPTION OF THE EXPERIMENT

The Guaranteed Benefits Experiment was conducted during a one-year period in portions of New York and Illinois. The following 16 company groups participated in one or both portions of the experiment in cooperation with the American Mutual Insurance Alliance:

Allstate, American Mutual Liability (New York only); Chubb & Son, Inc.; Continental Insurance Companies; Country Mutual (Illinois only); Economy Fire & Casualty (Illinois only); Employers of Wausau (New York only); Great American (New York only); Home Insurance Company (New York only); Insurance Company of North America (New York only); Kemper Insurance; Liberty Mutual; National Grange Mutual (New York only); Nationwide Insurance; Sentry Insurance; Utica Mutual (New York only).

In Illinois, the experiment covered Kane and DuPage Counties, and for some company groups, portions of Lake and suburban Cook Counties. All are in the Greater Chicago metropolitan area, although the western portions of the test area are rural.

The New York portion covered Monroe and Onondaga Counties, including Syracuse and Rochester and their surrounding suburbs plus rural portions of the two counties. Some 3.5 million persons reside in the two test areas.

Claims personnel of the participating companies made Guaranteed Benefits offers to auto accident victims who resided in the test areas and who had valid bodily injury liability claims against policyholders of participating companies. The program did not involve the sale of a new or different product to the insurance-buying public. It was strictly a claims-handling experiment involving the offer of an alternative form of settlement to persons presumed to be entitled to a liability recovery.

Eligible claimants were offered up to \$12,500 in Guaranteed Benefits payments. They could collect up to \$5,000 for medical expenses incurred within one year of the accident. They also could collect up to \$7,500 in additional benefits for wage losses and other damages, including physical impairments. (See Appendix C for details on the benefits.)

Ground rules of the experiment called for the insurer of the driver responsible for the accident to contact claimants as quickly as possible and offer to pay their medical expenses up to the \$5,000 limit, without red tape as the medical expenses were incurred. The injured person did not have to make any promises or sign a release to receive these medical benefits.

In addition, the claimsman handling the case offered the injured person a choice of accepting an additional package of optional or elective benefits in exchange for an oral agreement that the amount was satisfactory and he would not make any further claim against the other driver. These additional benefits covered such items as loss of wages, inability to perform usual services such as housework or child care, permanent bodily impairment, and the general inconvenience and pain associated with the injury. A survivor's loss benefit was provided for those who qualified for such benefits under state law. Claimants had 15 days to choose or reject the Guaranteed Benefits offer.

Property damage claims were handled under regular claims-handling procedures in all instances.

RESULTS OF THE EXPERIMENT

Some 2,890 auto accident victims took part in the Guaranteed Benefits Experiment—587 in Illinois and 2,303 in New York.

In essence, these claimants were asked to evaluate the attractiveness of a guaranteed payment covering their full economic losses, payable as the wage losses and expenses accumulate, in contrast with the possibility of obtaining a greater recovery by pursuing a regular liability claim.

The principal finding is that given a choice between the Guaranteed Benefits offer and the payment available under the existing auto liability system, 25 per cent of eligible claimants elected to accept Guaranteed Benefits in the Illinois experiment and 15 per cent elected Guaranteed Benefits in the New York experiment.

Since the experiment was conducted by claims personnel of the participating companies, it inevitably gauged the reaction of such personnel to an alternative compensation method within the environment of the present tort-liability system. The degree of acceptance varied considerably among individual claimsmen and this was reflected in the success they had in obtaining acceptances of the Guaranteed Benefits offers. In addition, the experiment had to compete to some extent with other claims-handling programs being heavily promoted by participating companies, notably some sophisticated forms of "advance payment" settlements.

Because of these factors, it is reasonable to assume that the percentages of acceptance obtained in the experiment represent minimum figures.

The following considerations appear to have been the major factors affecting claimant decisions to accept or reject Guaranteed Benefits offers (See Appendix B for table 1-4) :

1. The involvement of an attorney prior to the claimant's decision almost always led to a rejection of the Guaranteed Benefits offer. Roughly one-quarter of claimants were not consulted directly by the insurer—i.e., first notice of the claim to the insurer came from the attorney himself. In an additional one-third of the cases (proportions vary somewhat between New York and Illinois), the claimant retained an attorney after the Guaranteed Benefits offer was made but before a decision was made to accept or reject it. However, it is not clear whether the attorney influenced the decision or whether the claimant's decision to retain an attorney was, in itself, an indication that he or she had in mind a settlement larger than the Guaranteed Benefits offer. (See Table 2)

2. The size of the claim was an important determining factor. The larger the claim, whether measured by economic loss, the potential liability recovery or the amount available under Guaranteed Benefits, the less likely the claimant was to accept the Guaranteed Benefits offer. (See Table 3)

3. Money, as expected, was an important consideration. The greater the contrast between the claimant's perceived potential liability recovery and the amount he expected to receive under Guaranteed Benefits, the less likely the claimant was to accept Guaranteed Benefits. (See Table 4)

4. The claimant's economic station in life was of major significance. Claimants without earnings such as retired persons and housewives were more apt to elect Guaranteed Benefits than those earning an hourly wage or salary income. This may be due to the fact that Guaranteed Benefits provides an inducement in the form of minimum disability benefits for those with little or no wage loss (Guaranteed Benefits pays \$9 per day for persons unable to do housework or attend school). The self-employed also had higher than average tendency to accept Guaranteed Benefits. (See Table 3)

5. Claimants residing in rural areas were more likely to accept Guaranteed Benefits than claimants residing in urban areas. (See Table 3)

No definite conclusions can be drawn from this experiment regarding any possible savings that might result from the adoption of Guaranteed Benefits or some modification of the concept. Some savings appear to have been realized in the experiment in the minority of cases where the claimants elected to accept Guaranteed Benefits. This is based on claims personnel estimates of what would have been paid in those same cases on a tort liability basis (See Table 4). However, it is evident that offers were not made in all instances where liability was not clear. Savings with respect to those who elect Guaranteed Benefits could be offset or more than offset by additional costs for those who might accept Guaranteed Benefits in situations of uncertain liability, in the absence of any other cost-reducing measures.

APPENDIX A

CONDUCT OF THE EXPERIMENT

The Guaranteed Benefits Experiment was based on research conducted over a period of six years by the American Mutual Insurance Alliance, a national trade association of more than 100 mutual companies writing such coverages as auto and fire insurance, workmen's compensation and general liability. However, companies participating in the field testing of the concept represent a broad cross-section of the entire auto insurance business.

Committees representing member and nonmember companies planned and carried out training sessions for claims personnel in Chicago and in Rochester. A Technical Subcommittee designed the forms and procedures used to gather the pertinent statistics. Local claimsmen filled out the forms on each accident and claimant. A short form was used where injuries were minor. Demographic information collected on this form was limited. A long form was prescribed for the more serious cases.

All forms were forwarded to the Alliance, and were checked for accuracy, consistency and compliance with the rules of the experiment, to the extent that such checking was possible. Coding sheets were prepared from the detail on the forms and were submitted to the Judson Branch Center of the Allstate Insurance Company in Menlo Park, California. Here the data were key-punched and processed on the computer.

Tabulations in accordance with schedules prescribed by the Technical Subcommittee were prepared as print-outs from the computer and furnished to the Subcommittee. The Subcommittee reported that "It is clear from the print-outs and from discussions with the persons responsible for preparation and checking of forms, that 100% accuracy was not obtained with respect to the detail or the compliance with experiment rules. Nevertheless the Subcommittee and Staff have examined the results (as furnished) carefully and feel that the conclusions set forth herein are fully warranted."

APPENDIX B

ADDITIONAL DATA

The tables contained in this section are based on the tabulations described in Appendix A.

TABLE 1.—ACCEPTANCE OR REJECTION OF GUARANTEED BENEFITS

Location	Accept GB	Reject GB
Illinois.....	145 (24.7%)	442 (75.3%)
New York.....	335 (14.6%)	1,968 (85.4%)

TABLE 2.—CHIEF FACTOR AFFECTING CLAIMANT DECISION; CASES WITH AND WITHOUT ATTORNEY COMPARED WITH OVERALL ACCEPTANCE RATIO

Persons involved in decision	Illinois	New York
Self.....	222	253
Overall average.....	100	100
Attorney.....	25	37

A technique of analysis was used in Tables 2 and 3 to highlight the more significant factors affecting claimant decisions to accept or reject the Guaranteed Benefits offers. The average acceptance ratio is expressed as 100%. Table 2 indicates that when the claimant made up his own mind he was more than twice as likely to elect Guaranteed Benefits as the average for all claimants. On the other hand, when an attorney was involved in the decision-making process, the claimant was only about one-third as likely to elect Guaranteed Benefits as the average. As noted in the Summary of Findings and in item #1 on page 7, however, the claimant's decision to retain an attorney in the first place may indicate that he had already decided to seek compensation in excess of the medical expenses, wage losses and other benefits available under Guaranteed Benefits.

In assessing both Tables 2 and 3, it should be noted that some of the percentages are based on very limited samples, particularly with respect to Illinois data. For example, in the Illinois data for Table 2, only 17 persons made their own decisions; the figure is 66 for those consulting an attorney.

TABLE 3.—OTHER MAJOR FACTORS AFFECTING ACCEPTANCE OR REJECTION OF GUARANTEED BENEFITS

	Illinois (percent)	New York (percent)
Size of loss:		
\$1 to \$40	165	226
Over-all average	100	100
\$41 and over	83	82
Economic station:		
Retired, housewives and self-employed	135	218
Over-all average	100	100
Salary or hourly wage earner	88	84
Urban-rural environment:		
Rural—Kane County	140	
Over-all average	100	
Urban—Cook County	67	

TABLE 4.—COST COMPARISONS

Actual and Estimated Settlements for GB and Liability Cases

Illinois:		
GB accepted: Average GB settlement		\$241
Estimated liability value of same cases		304
Difference in value		63
GB rejected: Average liability settlement		952
Estimated value of same cases under GB		384
Difference in value		+608
New York:		
GB accepted: Average GB settlement		438
Estimated liability value of same cases		499
Difference in value		-61
GB rejected: Average liability settlement		1,017
Estimated value of same cases under GB		426
Difference in value		+591

Table 4 illustrates the fact that acceptance of Guaranteed Benefits was higher in the small-value cases. It also shows that when Guaranteed Benefits was elected there was an estimated savings averaging about \$60 per claim, as compared with what the settlement would have been on a tort-liability basis. On the other hand when Guaranteed Benefits was rejected the claimant received, on the average, between two and two-and-a-half times as much as if he had accepted Guaranteed Benefits.

It seems clear that claimants, or those upon whom they rely for advice, can identify those situations in which the tort-liability system offers a greater reward. In general, they are the larger cases, involving more serious injuries and economic losses.

APPENDIX C

DESCRIPTION OF BENEFITS, HERE'S HOW THE PLAN WORKS

Under the Guaranteed Benefits plan now being tested in Illinois and New York, auto accident victims who have valid bodily injury liability claims against policyholders of the participating insurance companies are being offered the benefits outlined in the six payment provisions below.

The over-all limit per injured person is \$12,500, including \$5,000 in medical benefits plus \$7,500 under one or a combination of all other categories. The medical benefits will be paid automatically to all eligible persons. The additional benefits will be paid to those persons who elect to accept them and who promise orally to make no further claim against the other driver.

1. Medical Benefits

Eligible persons will be paid up to \$5,000 for their reasonable and necessary medical expenses incurred within one year from the date of the accident, including up to \$1,000 for funeral expenses. These benefits will be paid even if the injured person has accident and health or hospitalization insurance. However, those persons who are entitled to auto medical payments and Guaranteed Benefits from the same insurance company will collect the auto medical payments first, then collect under the Guaranteed Benefits plan for any additional medical expenses up to \$5,000.

2. Basic disability benefits

Basic disability payments are intended to sustain the injured person and his family during the period of disability. Payments start as soon as the injured person elects to accept the Guaranteed Benefits option. They continue on a regular basis for as long as 12 months, and are pegged at 70 per cent of the claimant's usual wage. The maximum benefit per week may not exceed 125 per cent of the average weekly wage in the injured person's state of residence, and the total amount paid under this provision may not exceed \$7,500.

3. Loss of services benefits

This is an alternative to Basic Disability Benefits for persons who are generally not wage earners. Those who choose this alternative may collect 70 per cent of the cost of hiring someone to perform their usual services during the disability period. Their inability to perform these services must be medically certified. A minimum payment will be made even if the family manages to get along without hiring anyone. Payments may continue up to one year or \$7,500.

4. Supplemental disability benefits

When the injured person's disability payments end, he or she receives an additional lump-sum payment amounting to 50 per cent of all of the money already received under either the Basic Disability Benefits or the Loss of Services Benefits. This lump-sum payment will not be less than \$35 for each week the injured person was receiving disability payments. This extra payment is to compensate accident victims for the inconvenience and discomfort associated with their involvement in an accident. The combination of the disability payments plus this lump-sum benefit will more than reimburse most claimants for their actual losses. And all of the benefits are tax-free.

5. Medical impairment benefits

A lump-sum payment may be made for permanent disabilities such as loss of a finger. Guidelines devised by the American Medical Association are used to determine the percentage of impairment remaining after the injury has healed. The amount due will be figured by applying this percentage to a \$7,500 limit. Payments already made under the Supplemental Disability section will be deducted, and no payment will be made for impairments which amount to less than \$100.

6. Survivor's loss benefits

If an injured person dies within one year of the accident as a result of injuries received in the accident, the other driver's insurance company will pay a lump sum of \$5,000 for the benefit of persons who qualify for the survivor's benefits under state law. This payment is for the loss of income or services of the decedent. The \$5,000 will be paid in addition to any other Guaranteed Benefits which may have been paid, except that the total of all Guaranteed Benefits may not exceed the over-all limit of \$12,500.

The over-all limit of \$12,500 per person for all Guaranteed Benefits combined is sufficient to cover the losses sustained by all but a small percentage of auto accident victims. The few persons whose bodily injury losses greatly exceed this figure presumably will seek larger settlements under traditional claims procedures, if they can prove that the other driver was at fault.

Exhibit 2

CRITIQUE AND ANALYSIS OF PUBLIC ATTITUDES TOWARD AUTO INSURANCE A REPORT OF THE SURVEY RESEARCH CENTER, INSTITUTE FOR SOCIAL RESEARCH, THE UNIVERSITY OF MICHIGAN TO THE DEPARTMENT OF TRANSPORTATION

Background

On March 28, 1970, the DOT released its report on a survey of public attitudes toward auto insurance.

The survey was done by the Survey Research Center of the University of Michigan and is one component of the Auto Insurance and Compensation Study being conducted by DOT. The report is based on data collected through personal interviews with 3,075 respondents who were mostly heads of families in a national cross-section sample of dwellings, excluding Alaska, Hawaii, and D.C. Most of the analysis concerns the 2,534 families who owned cars.

Two samples of approximately equal size were drawn; one was interviewed between the middle of May and middle of June and the second between August 7 and September 10, 1969. Modern probability sampling with callbacks and household designation was used, thereby minimizing the bias of population restriction—i.e., the size and character of the population to be sampled. Even the use of modern probability methods, however, result in about 15% of the population being excluded (e.g., those institutionalized, hospitalized, homeless, transient, the military, mentally incompetent, etc.) plus those who refuse to answer; are unavailable after their callbacks, or have moved to no known address.¹

Moreover, use of interviews and questionnaires (the basic tools of 90% of social science research) can introduce a foreign element into the social setting they would describe. They can *create* as well as *measure* attitudes.² The data collection can stimulate an interest the respondent did not previously feel—thereby distorting the results.

Webb lists the following sources of invalidity connected with the use of all interviews and questionnaires:

1. The probability of bias due to respondent's awareness of his subject status. If people feel they are being "tested," the method of data collection *stimulates and interest* the subject did not previously feel, the *measuring process may distort the experimental results*.

2. The respondent's awareness of the interview process produces differential reaction (role selection) involving not so much dishonesty but rather a specialized selection from among the many "true" selves or "proper" behaviors available in any respondent.

3. Measurement as a change agent. This is the "preamble effect" where attitudes created in one part of the interview are carried over into another section.

4. Tendency of respondents to endorse a statement rather than disagree with its opposite and a preference for strong statements.

5. Error from investigator. The interviewer is an important source of cues to the respondent, and he helps to structure the demand characteristics of the interview. There is strong evidence that a substantial number of biases are introduced by the interviewer, such as interaction of age, sex, etc.

6. Change in the research instrument (the interviewer). In other words, to what degree is the interviewer the same research instrument at all points of the research? He may read "heavier" a second time. His skill may increase. He may be better able to establish rapport. He may loaf or become bored. He may have increasingly strong expectations of what a respondent "means." There is, therefore, always the risk that the interviewer will be a variable fitter over time and experience.

These biases are common to all interview and questionnaire survey techniques. Some of these, plus others peculiar to the DOT survey which we will enumerate later, strongly influenced certain key findings presented in the report.

INDEX OF SATISFACTION AND DISSATISFACTION WITH AUTOMOBILE INSURANCE

As its starting point, the DOT study utilized an Index of Satisfaction to determine the level of satisfaction and dissatisfaction with the auto insurance system among respondents surveyed. This is a valid method which is used to control variance of data and which the researchers felt would give more satisfactory indications of underlying attitudes than do responses to single questions or to one generic question.

According to the Index, 63% of respondents were satisfied to various degrees and 21% dissatisfied, with 16% neutral. Or to put it another way, 79% were not dissatisfied with auto insurance. This index took into account such "dissatisfiers" as delayed claim payment, cost of auto insurance, cancellations and non-renewals and general dissatisfaction with the system.

¹ Stephen, F. F. and McCarthy, P. J. *Sampling Opinions*, New York: Wiley, 1958. Also Ross, H. L. "The Inaccessible Respondent: A Note on Privacy in City and Country," *Public Opinion Quarterly*, 1963, 27, 269-275.

² Webb, et al. *Unobtrusive Measures: Nonreactive Research in the Social Sciences*, Rand McNally and Company, Chicago, P. 1.

These results were contrasted with responses recorded toward the end of the interview, after various features of the present auto insurance system were discussed with the respondents, which indicated that more people would be in favor of a "no-fault" system of insurance than in favor of the prevailing "fault" system.

Specifically, 41% opted in favor of claiming damages from their own insurance company only and receiving no compensation for pain and suffering, irrespective of which party was at fault. On the other hand, 36% opted for the current system. These percentages were based on an Index of Insurance System Preference utilizing responses from the last three questions in the questionnaire which purported to measure specific and general public attitude toward a "no-fault" system.

The important question to ask is this: What caused the alleged "change in attitudes"? There is strong internal evidence in the survey questionnaire that the manner in which the "no-fault" questions (A67, A68 and A69) were structured strongly biased the response elicited.

In the last analysis, all data must be elicited with questions. Simply put, the nature of the questions will determine what kind of data you get from respondents.³ Questions A67, A68 and A69 are particularly open to serious question since they are either *incomplete or erroneous in describing the system about which they seek to measure attitudes*. Moreover, they are of the structured variety which presents the respondent with fixed response alternatives. Structured questions are considered to be potentially more reactive, i.e., prone to bias than the "free response" type which were used in finding out what people thought about the present system.⁴

A close examination of the structure of these three key questions used to construct the Index of Insurance System Preference shows the following:

Question A67 describes for respondents a "no-fault" system which "in case of an accident your losses, *including damage to your car*, would be paid by your own insurance company, no matter whether you or the other driver were at fault." The question is misleading in that it does not indicate that major total no-fault proposals being put forth require the buyer to carry collision insurance to pay for damage to his car that would have been covered if a negligent driver damaged his car under the present system. The abolishment of 3rd-party property damage liability is in fact one of the big "cost-saving" features of no-fault plans like AIA and Stewart-Rockefeller and Keeton-O'Connell.

Question A68 offers the respondent a choice between two kinds of auto insurance (fault and no-fault) which would cost about the same and asks which he prefers. However, in describing the choices, "pain and suffering" was not adequately defined, the fact that no-fault involves collateral source offset was not mentioned, and how damage to vehicles would be handled was not mentioned. Also, in describing the fault system, mention of any 1st-party coverage was explicitly excluded.

Moreover, it's unfortunate that the choice was between fault and total no-fault, since there are other plans (such as the Alliance's Guaranteed Protection Plan) which seek to lessen dependency on fault and make other beneficial changes in the system without scrapping it completely. The researchers, as many research organizations do, could have consulted industry sources on structuring the questionnaire without compromising its integrity. It's unfortunate they did not and that an opportunity to gain valuable insights into consumer attitudes was wasted. However, we do get a glimpse of what the consumer wants in the way of change, since those respondents who perceived a need for change proposed a reduction of dependency on fault and wider use of the comparative negligence law approach.

Question A68a asks for a preference between a no-fault system which costs less than the present system, and the present system, *both as described by the interviewer*. Again, the answer would be highly biased since the key questions leading up to this choice were erroneous, misleading or both. Also, it was strongly implied that no-fault definitely would cost less.

Question A69 asks if respondents would opt for cost reductions if pain and suffering were eliminated *without* describing just what pain and suffering is. The question also implies that no-fault would automatically take care of vehicle damages without collision insurance being carried. Also conspicuous by its absence is any statement that would have given respondents a chance to comment

³ Backstrom, Charles H., and Hursh, Gerald D., *Survey Research*; Northwestern University Press, 1963, pp. 66-110.

⁴ Webb, et al., p. 33.

on their attitudes towards no-fault with its "benefits" as described, but at a higher price—although some respondents did volunteer the information that they thought no-fault would be more expensive than fault.

To summarize, the questions which determined the *Index of Insurance System Preference* were poorly structured, misleading or incomplete. Two key elements—pain and suffering and vehicle damage—were mishandled in their presentation. These strong internal biases, plus other internal and some external ones we will indicate later, probably account more for the so-called change in attitudes of respondents from the ones they felt at the beginning of the interview. It seems then that the internal invalidity associated with the interview process set into motion attitude changes (between beginning and end of interview) which would not have otherwise occurred. That "change" did occur is probably, in the words of Webb, a "measurement-produced artifact,"⁵ and therefore invalid.

The damage done to the survey's credibility in the areas mentioned also extended to giving the impression to young drivers that no-fault would result in lower premiums and to insureds who had been cancelled that no-fault would somehow assuage the market problem. (See DOT Study pp. 80–81.) Significantly, these groups (34% of young drivers and 66% of these cancelled who found difficulty obtaining new coverage) expressed strong favor for a change in the system, probably in the mistaken impression that no-fault would solve their particular problems.

One of the most interesting insights into public attitudes toward the present system, and the various improvements that might be made, is found in the supplementary tables on page 125. When respondents were asked an open-ended question ("In your opinion, is there a need to change this system? In what ways?"), more than two-thirds—68% of all respondents—did not express a preference that the system be changed.

Among those who indicated a need for change, 10% indicated some degree of interest in lessening dependence on fault. As the document itself puts it, "modify so that everyone collects regardless of who is at fault, or so that dependency on proving fault is reduced." (Emphasis added.)

Another 10% said, "improve the way in which fault is determined and/or compensate claimants in (inverse) proportion to their degree of fault in an accident." Four percent said "let each company take care of its own insured," and the remaining answers were scattered.

This is hardly a ringing endorsement of an all-out change to a no-fault system. It does appear to support some change toward lessening dependence on fault, and toward adoption of the comparative negligence concept in determining amounts of compensation.

Exhibit 3

CRITIQUE AND ANALYSIS OF "ECONOMIC CONSEQUENCES OF AUTOMOBILE ACCIDENT INJURIES"

(DOT Serious Injury Study)

I. SCOPE OF THE STUDY

The foreword to this two-volume study describes it as "the most comprehensive and carefully conducted study of the plight of people injured by motor vehicles ever produced." And the news release issued at the time the study was released on April 28, 1970, said it "represents approximately 500,000 fatalities and seriously injured persons."

In fact, the scope of the study is considerably more narrow than these statements would imply. This is not a study of 500,000 persons, nor even 5,000. The billion-dollar estimates, and the thousands of persons listed under various categories, are in fact based on interviews with only 1,376 accident victims or their survivors.

Moreover, this is not a sample of all people injured in motor vehicle crashes, as the title seems to indicate. The study is confined to a tiny segment of the auto accident universe—those persons who incurred medical expenses exceeding \$500, were hospitalized for two weeks or longer, missed three or more weeks of work or, if not working, missed six weeks or more of normal activity. This group of "seriously injured" persons represents about 10% of all persons injured in vehicle crashes, and has characteristics which differ markedly from motorists

⁵ Webb, et al., p. 12. Also Crespi, L. P. "The Interview Effect on Polling," *Public Opinion Quarterly*, pp. 948, 12, 99–111.

in general and from the other 90% of auto crash victims. For example, from other DOT reports we know that more than half of all drivers killed in auto crashes are drunk. Males between the ages of 15 and 44 constituted 20% of the population at the time of the survey, but incurred 39% of the serious injuries and fatalities. And a cross-check with other DOT studies and insurance industry data indicates this tiny group had available far less insurance protection of all kinds than the population generally. (It is quite possible, of course, that the interviews simply did not obtain accurate information on the insurance they had, in which case the estimated payments they received are grossly understated.)

For all of these reasons, and others, the "Economic Consequences" study does not present a valid picture of how the auto accident reparations system performs, nor how well auto crash victims fare as a total group. As will be demonstrated below, the study does not even present a valid picture of what happens to the small group of seriously injured persons represented in the sample of 1,376.

II. ACCURACY OF THE DATA COLLECTED

Public statements made by the DOT staff and others concerning this study have emphasized the finding that persons killed or seriously injured in 1967 highway crashes had aggregate "compensable" economic losses of \$5.1 billion, and received only \$2.5 billion in aggregate compensation from all sources. Similar comparisons are made for numerous sub-categories within the 1,376-person sample.

All of these comparisons—which have been widely published and cited as evidence that the present auto insurance system is a failure—depend on the accuracy of both the raw data collected and the aggregates based upon it (and blown up to 370 times life-size).

Yet the report itself is replete with warnings about the "speculative nature" of the projections of future losses (Vol. 1, p. 19), the "substantial" errors in classifying the various individuals (Vol. 1, p. 24), the "arbitrary" criteria used for defining serious injury (Vol. 1, p. 17), and the candid admission that "... the study does not provide reliable estimates of aggregates" (Vol. 1, p. 15).

In sort, the DOT chose to publicize the last reliable findings, and to attribute to them a significance which goes far beyond the level of confidence expressed about them by the professionals who actually conducted the research.

1. *Verification of losses and payments*

Confidence in the entire study is further undermined by the fact that the basic raw data was derived from largely unverified estimates of losses and payments stemming from accidents that occurred more than two years prior to the interviews. In this connection, it is interesting that the U.S. Public Health Survey tosses out all data based on events more than 90 days old, having found that recollection of details beyond that point are less reliable. As the report notes in the foreword, these are "events the respondents surely would rather relegate to the recesses of their minds."

In view of this, it is surprising that there was so little verification of the actual losses and payments received, even though most respondents gave permission for such verification. For example, no attempt was made to verify with insurance companies the amounts paid to these crash victims under various coverages. Nor was any attempt made to determine whether there was full reporting of amounts received from all sources. Information used to estimate wage losses would appear to be particularly vulnerable, since only 208 replies were received from employers, and only 57 of those replies were actually used.

This criticism does not in any way imply that respondents deliberately falsified their replies. It simply calls into question the decision to accept as completely accurate the respondents' estimates of the economic losses they incurred and the exact amounts of compensation they received from 7 or 8 possible sources, for auto crashes which occurred more than two years previously.

2. *Under-reporting of benefits available*

Independent evidence suggests that the reporting of compensation received from these multiple sources was substantially understated.

For example, the DOT data indicate that about 65% of the respondents were covered by medical and hospital insurance, and only 51.4% of the seriously injured collected something from medical insurance. But the Health Insurance

Institute reports that 85% of the U.S. population is protected by one or more forms of private health insurance.

Only 54% of the respondents reported they had auto medical payments coverage, and only 37.9% indicated they were paid anything from this source. But the DOT study of public attitudes indicate that 78% of the motoring population have auto medical payments coverage—a figure which jibes with insurance industry estimates.

Only 62% of the fatalities in this study had life insurance, according to the DOT, whereas a nationwide survey for the Institute of Life Insurance indicates 71% of Americans own at least one type of life insurance.

Only 29% of the respondents said they collected anything under the auto collision coverage, but the DOT public attitudes study shows that 77% of the motoring public has such protection.

These discrepancies may be explained in part by the difficulties which many respondents may have had in accurately recalling events that occurred more than two years previously. Some part of the problem may also be due to the DOT staff's lack of understanding of the various forms of insurance and what they cover. For example, this report shows no benefits paid under the auto medical payments coverage for instant death cases, apparently because the staff was unaware that the auto medical payments coverage pays funeral expenses.

3. *Statistical credibility of the study*

Another major problem affecting the credibility of the findings has to do with the statistical credibility of the detailed comparisons among various subcategories. The overall sample of 1,376 is relatively small to begin with. When this sample is subdivided into dozens of smaller categories, the numbers of persons falling into many of these categories are so low as to have very low credibility. Yet this study blows up the results obtained from subsamples as small as 13 persons into national projections, and draws conclusions based on such data.

In all fairness, it should be noted that the professionals who did the statistical work pointed out that the margin of error increases enormously as the sample is subdivided. But the fact that the figures are multiplied by 370 tends to conceal just how thin some of the data really are. And those who are using this study to castigate the present auto reparations system have tended to ignore the cautionary statements and qualifications buried in the 677 pages of this study, and have accepted at face value the damaging "findings" which suit their purposes, whether they have any statistical validity or not.

III. INTERPRETATION OF THE DATA

Several questionable assumptions are implicit in the public statements made about the findings of this study, and in the basic conception of the report.

1. *Definition of "compensable economic loss"*

The lead line of the news release issued upon publication of this study says, "Auto insurance repaid only one-fifth of the \$5.1 billion compensable losses resulting from deaths and serious injuries in 1967 automobile accidents . . .".

Obviously, the definition of "compensable economic loss" is critical, since this is the yardstick used to measure both the performance of the auto insurance system and how the injured persons fared.

In devising this yardstick, the DOT deliberately excluded all compensation for disfigurement, permanent impairment, suffering and other general damages that go beyond direct economic losses such as medical expenses and lost wages.

On the other hand, the DOT assumed that all economic losses sustained by heads of families as a result of auto crashes should be fully reimbursed for the rest of their lives—a goal never attempted nor achieved by any compensation system in our society, including those established by government for persons injured in public employment and for persons killed or injured in military service.

The DOT's public statements about this study also implies that the auto insurance system ought to be expected to absorb all of the losses defined as "compensable" by the DOT, regardless of the circumstances of the accident, the economic status of the injured person, the availability of other sources of compensation and the existence of statutory provisions such as wrongful death limits.

These are, at best, questionable assumptions.

Moreover, in preparing its unverified estimates of future wage losses, the DOT made no adjustments for income taxes, remarriage of widowed spouses, the decreased life expectancy of seriously impaired persons, the expenses that the persons would have incurred in earning that future income, nor a number of other factors which might reasonably be considered in determining which losses should be "compensable."

2. *Interpretation of averages*

One of the most widely-quoted "findings" of this study is that, "On the average, about half of the total personal and family economic loss was recovered" from any source. But a detailed study of the tables reveals the startling fact that only 121 persons (out of the total sample of 1,376) accounted for 94% of the gap between the DOT's estimate of "compensable" economic loss and the compensation reported by respondents.

In short, nearly all of the "uncompensated" loss stems from a small group of catastrophic situations—i.e., those crash victims estimated to have incurred economic losses exceeding \$25,000. This small group represents only 8.8% of the real-life sample of 1,376 crash victims, and fewer than 1% of all auto crash victims.

This means the other 91.2% of the seriously injured group were compensated for all but 6% of their economic losses, as a group.

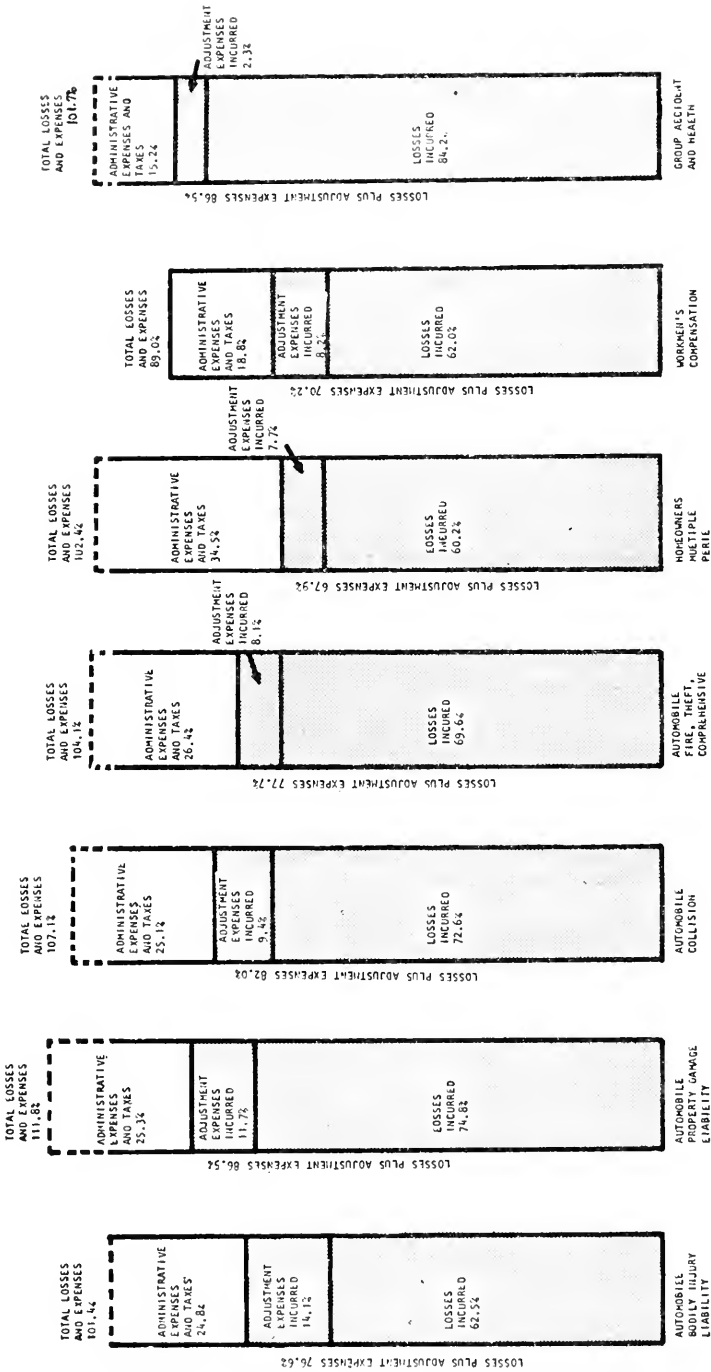
3. *Information omitted*

The disproportionately high losses sustained by the "catastrophic few," who account for 94% of the total uncompensated loss, raise questions about the omission of relevant information on the circumstances of these catastrophic situations. It is impossible to get answers from these published volumes as to why these individuals were not reimbursed.

There is no explanation in the report as to why this vital information was withheld, while other less useful information is reported in great detail. For example, why was it decided to withhold information on the number of seriously injured persons who did not recover from auto insurance because they were injured in single-vehicle crashes, or were at fault, or had neglected to purchase auto medical payments and collision insurance? How many had neglected to purchase health insurance, life insurance or other available forms of protection? Obviously, these factors have a direct bearing on the reimbursement received by this highly selected group of crash victims.

Finally, it would appear that all of the shortcomings attributed to the recovery systems for auto accident victims apply with equal or even greater force to the recovery systems available to persons injured or killed in other ways. In fact, this study indicates that auto accident victims are better protected already than most other categories of injured persons.

Proposed improvements in the present system, such as those outlined in the Guaranteed Protection Plan of the American Mutual Insurance Alliance, would further improve the protection available to auto crash victims.



Source: Aggregates & Averages (Property-Liability) - 1970 Edition - Alfred M. Best Co.
Averages of stock and mutual companies for 1969.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. I am very interested in your statement that the provisions of H.R. 7514 prohibit States from requiring liability insurance that is beyond the coverage of this act, that is, the no-fault type. In looking at the bill, I find that that is true.

On page 8 of the bill, in section 3(b) (1), it is provided:

No State may require the purchase or acquisition of insurance or other security as a condition to the ownership, registration, operation or use of any motor vehicle upon the public streets, roads or highways of such State other than a qualifying no-fault policy.

Then in the second paragraph there is an exception. It says:

Paragraph 1 of this subsection shall not apply to a State requirement in (a) as with respect to property damage insurance, and (b) as with respect to common carriers and commercial vehicles provided that they may acquire insurance beyond the protection for coverage under section 5(b).

It would seem to me that your objection on that score would be met if, on line 16 the language was that "drivers purchase or acquire insurance described in section 5(b) within such limit or in such amount as may be prescribed by State law." In other words, that exception should not be limited to common carriers and commercial vehicles, but I think that a State should be authorized to require liability insurance that would cover the catastrophic injuries that may be covered under this act.

For instance, let us take a man who is emasculated. True, he falls under the catastrophic coverage, I guess—I suppose that is dismemberment or one of the exceptions.

Mr. CARNEY. It is catastrophic.

Mr. ECKHARDT. It is catastrophic, at any rate, as my colleague mentions, but it does not impair his earning capacity. It might keep his mind more on his business. Obviously, he might not be entitled to recovery under the no-fault section. If there is no insurance compelled by the State or Federal Government respecting liability, he has a right to go against the person who injured him; but it may be very difficult for him to find a lawyer to try his case, particularly when the easily obtainable damages are already gotten under the no-fault section and when that lawyer, of course, must risk the difficulty of collection of the claim. There may not be any insurance.

Of course, your arguments go not only to the question of no liability insurance, but I gather also to the proposition that the no-fault insurance under this section doesn't cover a wide range of cases.

Mr. MAISONPIERRE. This is right, sir.

Mr. ECKHARDT. But with respect to that question of liability insurance it seems to me it might be corrected if we simply substituted for the words "common carrier commercial vehicle" just the term "driver" or comparable language that would cover everyone and thus they would only be prohibited from additionally insuring liability that would cover the no-fault range of coverage, but could be compelled, and I think ought to be compelled, to cover some range of catastrophic injury.

Would you agree that that should be done?

Mr. MAISONPIERRE. We would agree to this, Mr. Eckhardt. We believe that the States have the flexibility or authority to require this additional coverage from their citizens which, under this specific lan-

guage, would be barred, and I know under your proposal it would be allowed. We would endorse that.

Mr. MOSS. I want to make it very clear at this time that I agree that the State should be able to impose such requirements, and there will be a draft of amendatory language to accomplish that objective.

Thank you.

Mr. ECKHARDT. Now I understand what we are doing here—if we pass any kind of no-fault liability provisions—is that we are additionally loading the total insurance program with payments to those who would otherwise be excluded for fault. So this is one additional loading involved.

Mr. MAISONPIERRE. That is right, sir.

Mr. ECKHARDT. I don't say that that is necessarily bad, but I am merely stating that that is a factor which tends to increase rates.

Now the question is: Can this additional load be offset, in your opinion, by efficiencies in administration and in reduction of legal costs including insurance adjustment costs involved in the no-fault concept?

Mr. MAISONPIERRE. I believe, Mr. Eckhardt, that under the three proposals which I have mentioned today—that is, guaranteed protected, the Uniform Motor Vehicle Insurance Act, and the administration proposal as we could thrash it out—there is sufficient reduction in the general damage payments to bring about a small reduction in the overall cost of insurance.

Mr. ECKHARDT. But will that offset the additional load of the no-fault, of the cases which would involve the fault and would therefore exclude insurance were this act not in effect?

Mr. MAISONPIERRE. Mr. Eckhardt, we have made some actuarial analysis of the three proposals. As I say, we have had to make some educated guesses as to what would happen under the different systems. We believe that there will be a reduction for the bodily injury premium cost of the average automobile insurance policies, 8.5 percent under the Uniform Motor Vehicle Insurance Act.

This, Mr. Chairman, was before the amendment was made extending the disability period from 30 to 36 months. It would be a little less than that. It would be about 10.7 percent under the administration plan, and 5.7 percent under the guaranteed protection plan.

Now, I want to make clear what these figures mean. These figures apply only to that part of the insurance called the "bodily injury" part of the coverage. What came as a real surprise to us in examining the structure of the insurance premium is that two-thirds of the total cost of the average insurance policy, in some areas it can be as high as 80 percent, goes for the repair of the car.

Mr. ECKHARDT. May I interrupt you for just a moment right at that point?

Mr. MAISONPIERRE. Yes.

Mr. ECKHARDT. I have wondered why, if we are going to adopt no-fault insurance as a means of reducing the cost of administering insurance, why we don't also include property coverage, since the property coverage cases are very small and the question of determining fault must therefore be a larger proportion of the total claim than in the case of the bodily injury case.

Mr. MAISONPIERRE. In answer to that specific question, we would hesitate to endorse a proposal of this nature for a number of reasons.

Number one, the cost of administering these cases, the investigation cost, and so on, is very small. It is small for this reason. That in many, many instances, in these cases, if your car has been damaged you will go to your own insurance company, which will pay for the damage less the deductible which you have. Then it will subrogate against the tortfeasor.

Now the industry has set up an intercompany arbitration program to handle this subrogation mechanism. Before coming here today, I made some check as to the extent to which that program operates. There are about 500 companies which are signatories to this program which means that the companies agree to submit the subrogation issue to compulsory arbitration. In 1970, 131,000 cases were handled through this intercompany arbitration program. Approximately \$57 million was involved in the transaction.

Now, the cost of this program is based on a fee. It is a fee base. The minimum fee is \$3.50. The maximum is \$7.50 in New York, with the average figure on a countrywide base of \$4. This intercompany arbitration program is a program run by the industry. The companies set up arbitrators from among their own employees. The arbitrators are approved and we have, I think, relieved the court system of a tremendous burden through this mechanism.

Mr. ECKHARDT. That is all very well. But what about a man who has an old car and has no collision insurance and he is involved in one of these accidents? You could pretty well by rule of thumb write him out and pay everybody else in the collision who is insured.

Take, for instance, a telescoping accident on a highway with four or five cars. One of them is not insured at all with collision insurance, but other parties may be liable. It is true that you may ultimately sort of divide the whole loss amongst the insured vehicles, but you are going to leave him out ordinarily, aren't you, unless he brings his claim and sues for it?

Mr. MAISONPIERRE. As a practical matter, this is the type of case that the companies are rather anxious to go in there and settle promptly. For this reason: In a case which you described the company would like to avoid having a liability claim brought against it.

Mr. ECKHARDT. That is right. If he honestly states, "Look, I wasn't hurt," his honesty is penalized by his being wiped out in ordinary cases, isn't it?

Mr. MAISONPIERRE. Most of the companies, Mr. Eckhardt, set up a telephone unit claims investigation system for these minor cases and for the property damage cases. What happens is this. When a claim report gets into the office it is given to the telephone unit to call the claimant to try to ascertain whether there were bodily injuries or not, and at the same time to attempt to settle, if it is a case which is ready for settlement, right there on the phone.

This is a method which has been used to reduce the operating cost of the companies and also, frankly, to better control the cases and it has worked, I think, pretty well. Now, if I may go on—

Mr. ECKHARDT. I am sorry, I think I diverted you on this property loss, and I am interested in your testimony on that.

Mr. MAISONPIERRE. I would like to finish on this question now, if I may, sir. Another reason we think the public would find it difficult to accept a no-fault property damage system is this. If I were to strike

your car, today you would collect in full for the damages to your car. Under a no-fault property damage system, I could back into your car in a parking lot and if I had some sense of politeness I might apologize for what I have done and say, "Sorry, social error," and I could drive off. And you would be stuck. If you had insurance, you still would be stuck for the cost of the deductible. If you did not have insurance, you would have to pay for the whole thing.

To the extent that about 60 percent of all accidents involve property damage claims only, I think we would find a certain public outcry against having to pay for cars which are parked in parking lots and the individual having to pay for either his deductible and being stuck with the cost. It could increase the cost of insurance to this individual a pretty sizeable amount.

If I could go back now to the other part of the question, sir, as I said, two-thirds of the insurance premium goes for the repair of the car and one-third for the repair of the person. This is on a national basis. Now the figures which I gave of cost reduction are applicable only to the repair of the person. So, if we translate these cost reductions to the overall cost of an individual policy we would find that your bill, Mr. Moss, would bring about roughly a 2.75 percent cost reduction. The administration program would bring about roughly maybe 3½ percent, and our guaranteed protection plan somewhere in the neighborhood of 1.75 percent cost reduction.

Mr. ECKHARDT. Now your plan would have the advantage, however, of covering virtually every time of loss either under no-fault or under tort liability, would it not?

Mr. MAISONPIERRE. This is right, Mr. Eckhardt. We try not to leave gaps.

Mr. ECKHARDT. On the other hand, the bill that we have before us does, I think, leave a very serious gap in the area of permanent partial disability which I think is virtually not covered except in the sense of that partial immediate disability that incapacitates a person from working on the job that he previously worked on, and requires that he take a lesser job. What we frequently talk about as partial disability, as you well know, is disability which may exist in making it more difficult, more painful, more arduous for a person to work on his present job because he has some percentage of disability existing which is permanent.

As I understand, the bill that we have before us does not cover that at all and excludes it from tort liability unless it extends to 70 percent.

Mr. MAISONPIERRE. Mr. Eckhardt, that is right.

I was very much interested, Mr. Chairman, during one of the hearings you made reference to the Veterans' Administration Disability Guide. Frankly, I had completely forgotten about the VA guide, having dealt mainly with Workmen's Compensation programs. So I got hold of one of the guides and I checked. I see for instance the loss of an eye, if the other eye is good—this is No. 6066—if there is 20-40 vision in the other eye, the loss of one eye would only count as 40 percent disability.

An injury, for instance, to the cervical spine requiring the constant wearing of a brace would only amount—this is a fractured vertebra without cord involvement—with normal mobility requiring neck

brace would only rate a 60 percent rating. I think these are people who would find it difficult—let us take for instance a construction worker who, after a 36-month period would, I think, be unable to return to normal occupation, perhaps any occupation, who would find that the would have no recourse really for any wage continuation plan.

Mr. ECKHARDT. There is one thing I would suggest to you. On page 3 of your statement, where you use the term "permanent loss of a bodily function," would it not be better if you used the term which you use on page 4 "permanent impairment?"

Mr. MAISONPIERRE. Yes. I agree with you, sir.

Mr. ECKHARDT. What I am thinking of there is that you may not lose a definable bodily function when you have a permanent impairment, as for instance in the case of a back injury. It seems to me that what you really intend to do there is take out of these limitations that kind of injury which is a partial permanent injury, regardless of what nature.

Mr. MAISONPIERRE. That is right. I agree.

Mr. MOSS. Mr. Broyhill?

Mr. BROYHILL. I have just one question, Mr. Maisonpierre. Are you advocating that your plan described in your blue book be made a nationwide standard?

Mr. MAISONPIERRE. No, sir. We are advocating this at the State level. We strongly endorse Mr. Volpe's contention that there needs to be experimentation with different approaches. We like our plan. We think our plan is the greatest in the world obviously, and we have submitted, we have had our plan introduced in about 16 or 17 States. We know that through the legislative process that which is introduced will come out somewhat different through the methods of compromise, and so on. We believe our plan is a good working base from which they could experiment.

We look, for instance, at the Massachusetts program as a variant of our plan, but certainly not identical to our plan. At this stage there is only one State where we have any hope, and I am not going to state the extent of the hope. We can always hope, but there is some expectation, really, a plan somewhat similar to ours to be enacted. This is in the State of Michigan where the plan has been introduced with bipartisan support, with strong support, and there is an extensive campaign going on generated primarily by the insurance industry, by the domestic insurance industry, to get public support for this type of program.

It is the only State where we think we may have a chance this year to get something enacted. We have encouraged the States to look at our plans on a State-by-State basis. We have testified before State legislative committees in favor of our plans. We have urged our plan on the rest of the industry and with some varying degree of success.

Mr. BROYHILL. One of the things I like about H.R. 7514 is that there will be a noncancellable clause in these policies. This is one of the complaints that I have received the most as I have talked to people in my district; that their insurance company for little reason will cancel their policy and then maybe offer it again to them at a far higher price.

Does your plan deal with this problem, which is I think a nationwide problem?

MR. MAISONPIERRE. It is just about a nationwide problem.

MR. BROYHILL. Our State is one of the few that requires insurance.

MR. MAISONPIERRE. Yes, one of the three that does. As an association we have operated on the basis that cancellation—I am talking about cancellation, not nonrenewal—cancellation should be limited to three areas: Nonpayment of premium, revocation of license, or the suspension of the vehicle registration.

MR. BROYHILL. What about renewal?

MR. MAISONPIERRE. Renewal is a different matter. We are urging through our program that the State enact legislation which would (1) require the companies to notify the individual in good time that he is not going to be renewed and (2) that the individual have available the reasons for his nonrenewal, so that he can argue the decision of the company.

Now, the reason for the problem which has been existing, which I think may be on the way out or at least lessening at this time, is that for the past 2 years the companies have sustained horrendous underwriting loss. This has come about primarily because in many, many jurisdictions the automobile insurance rates were kept artificially deflated. This, of course, meant that the companies were not anxious to sell insurance, because whenever you would sell a dollar's worth of insurance, if you knew ahead of time that you would pay out \$1.20 in losses, you would be very careful and very leery about insuring anyone.

This is somewhat similar to the situation we have had in banking. As you know, the State of Maryland has a usury law which prohibits the lending for mortgage funds at an interest rate of higher than 8 percent. The prime interest rates before they came down were $8\frac{1}{2}$, $8\frac{3}{4}$ percent. It was impossible in the State of Maryland for people to find conventional mortgage money.

There is a similarity between this and the insurance system. If the rates are kept inadequate for one reason or another insurance is going to be scarce. Companies are not going to sell insurance in the States.

Another reason is this: Simultaneous with the horrendous insurance loss—one company lost \$300 million in underwriting loss, another company, it happens to be one of our companies, lost \$80 million in underwriting loss—we also had horrendous stock market conditions, so that the underwriting losses which the companies seem to have become accustomed to over the years were not made up with investment profit.

So the companies' surplus, the reserve being kept for the solvency of the company, came to a dangerous level as regards the amount of insurance which the companies were writing. The companies just had to pull back their horns.

Another thing, of course, is that we have seen a tremendous laxity in the administration of licensing, driver licensing laws in many, many States. I have examples with me here of individuals driving with good drivers license who had 65 or more violations or accidents over a period of a few years. Now, these people get insurance. They have to pay high for this insurance, but they get insurance.

To the extent that the licensing authorities are failing in their responsibilities, it gives the insurance executives some rather uneasy

feeling as to whom they must insure. Now, the day before yesterday, the Consumers Union testified before you, Mr. Chairman, saying that the insurance industry should not be the judge as to who should and who should not drive on the highway. We agree 100 percent. But at this stage I think it is fair to say that there are very, very few States that have the courage to say "No" to individuals who should not be on the highway.

Mr. BROYHILL. What you are saying is that you want to say "No" to a particular motorist who wants to buy insurance from you?

Mr. MAISONPIERRE. I am not saying this. I am saying that we should not have the right to say "No."

Mr. BROYHILL. You want the right to turn down that application?

Mr. MAISONPIERRE. No. I don't want the right to turn him down. I would like the State authority to have the backbone to say "No" in issuing the license to this fellow, so that we won't have to insure this man. I think that for the general safety of the public—you may have read the other day the editorial in the Washington Post about this individual who had been involved in Michigan in an accident. In the last 2 years he had had his license lifted three times. This accident, however, happened to have killed five individuals. He lost control of his car going over 100 miles an hour. We don't think this fellow should be on the highway. He is a menace, but under the present system we are insuring him.

We don't think that the insurance industry should say you should not drive or you should drive. We think that we should be able to depend on the backbone of the State authority in saying you can drive and you cannot drive.

Mr. BROYHILL. Thank you.

Mr. Moss. Mr. McCollister?

Mr. MCCOLLISTER. Secretary Volpe has testified that a no-fault plan would make it easier for the young and the aged to get insurance. What comment do you have about that?

Mr. MAISONPIERRE. Mr. McCollister, this came as quite a surprise to me when Mr. Volpe testified to that. The factors that go into the cost of insurance or that would go into the cost of a no-fault insurance system are, (1) the frequency of involvement, (2) the severity of the involvement, expected involvement, (3) the expected losses after an accident.

Let us first take a young person. Young persons, we know, unfortunately, as a class are likely to have more accidents than older persons. The accidents involving young people also statistically are shown to be much more severe than those involving older people. So, we have a greater frequency and a greater potential of damage involved.

Now, as we look at the losses we see this, we see that on the minus side the young person probably has not established a high earning capacity. So there will probably be some reduction there. But as the injuries which this young fellow will have sustained will be probably much more severe, he will make much greater use of the medical services.

Now under today's hospital cost, we see that 1 day in a hospital can almost equal 1 week's pay. So that the indemnity benefits are no

longer as important as the hospital and medical cost. So we see that this young person is going to be using the insurance system more frequently and will draw out of it more funds. Hence, we think he will be paying more than the average, as he is today.

Now, what about the older person? The older person for the last 2, 2½, maybe 3 years, has been getting a reduction in auto insurance rates. Companies have found that older people are careful drivers and they have been getting reductions in their insurance rates, special classification has been filed in many State jurisdictions.

However, under a no-fault plan these people will be judged on the frequency of accidents. Where the companies would pay considerable more would be in the usage of medical expenses. An older person who sustains an injury is likely to find his period of recovery considerably delayed because old age has set in and an injury may well have complicated some previous condition. So, again, he will be making greater use we believe of the medical facilities, very expensive facilities, and he will probably be paying more than you and I would be paying under the no-fault system.

MR. MCCOLLISTER. So then you say that a merit rating system could exist with no-fault in evaluating the greater risk of various places?

MR. MAISONPIERRE. No, sir. I would question very much, Mr. McCollister, whether the public would accept a merit rating system which charges the cost of insurance on the basis of involvement rather than on the basis of negligence. I think, in his testimony, Mr. Volpe made specific reference to a merit rating system. I think what he meant, really, was that you could still charge the negligent driver for his negligent acts. This is inconsistent, really, with no-fault. If you say that we should have a no-fault system and then, if we start introducing a no-fault system through the merit rating system under the table, I think we would be criticized by everyone.

This was another thing which I had difficulty in understanding in Mr. Volpe's testimony. Under the present system, or under the guaranteed protection plan, we think that the driver who is responsible for accidents is going to be charged more, because he is a negligent driver. So that we say that the negligent driver really pays more for his conduct.

Under a no-fault plan, on the other hand, individuals would pay a premium not on the basis of accidents which they caused, but on the basis of the benefits which they use. And this may well be—the benefits used may well be totally beyond their control.

MR. MCCOLLISTER. You are a very competent witness and I greatly appreciate your testimony.

MR. MAISONPIERRE. Thank you very much, sir.

MR. MOSS. I have just a few questions.

On page 3, at the top of the page, in discussing the guaranteed protection plan I notice that you provide no more than 50 percent of medical and hospital expenses if such expenses run \$500 or less.

MR. MAISONPIERRE. That is correct.

MR. MOSS. What percentage of the claims involve expenses of \$500 or less?

MR. MAISONPIERRE. This, Mr. Chairman, is a very substantial number of claims.

MR. MOSS. This has been a very substantial reduction in payout, hasn't it?

Mr. MAISONPIERRE. It is, sir. This is a reduction in payout which affects the minor cases.

Mr. MOSS. Minor is relative. A man who makes a hundred dollars a week, if he has a hundred dollars in damages, that is not minor, is it?

Mr. MAISONPIERRE. These, Mr. Chairman, are in addition to the loss of wages. So that he gets paid for his loss of wages.

Mr. MOSS. He usually doesn't have much of a savings account.

Mr. MAISONPIERRE. Right.

Mr. MOSS. If he has an unexpected expense item, he usually has to go out and borrow the money. So it really is not that nominal, is it? To many families this is a very significant increase in the cost of owning an automobile.

Mr. MAISONPIERRE. This is right, Mr. Chairman. But again we would pay this individual first 85 percent of his wages, and then on top of that we would pay for his noneconomic loss—for his pain and suffering and inconvenience. We would first pay for his wage loss, we would pay for his medicals, and then we would pay in addition to that 50 percent of the medical.

Mr. MOSS. You would not pay for the medical?

Mr. MAISONPIERRE. Yes, we would.

Mr. MOSS. Totally?

Mr. MAISONPIERRE. We would pay totally for the medical.

Mr. MOSS. Then how would we have anything additional? If payment for these damages would be limited to no more than 50 percent of medical and hospital expenses?

Mr. MAISONPIERRE. These are the damages, Mr. Chairman, that go beyond the economic losses. These are the pain and suffering; these are the inconvenience.

Mr. MOSS. If we have gone to a hospital and he has——

Mr. ECKHARDT. Will the gentleman yield?

Mr. MOSS. Yes.

Mr. ECKHARDT. As I understand, you would pay all that is paid under H.R. 7514.

Mr. MAISONPIERRE. Yes.

Mr. ECKHARDT. But you would pay this in addition?

Mr. MAISONPIERRE. This is right.

Mr. ECKHARDT. As general damages?

Mr. MAISONPIERRE. This is right.

Mr. ECKHARDT. But you would trigger general damages to the amount of hospital cost?

Mr. MAISONPIERRE. Medical and hospital cost.

Mr. ECKHARDT. Is that correct?

Mr. MAISONPIERRE. This is right, Mr. Eckhardt.

Mr. MOSS. But this has a very significant impact on the reduction in the payout?

Mr. MAISONPIERRE. This is correct, Mr. Chairman. It would have about a 15 percent for what we call general damages. The general damages today eat up about 45.2 percent of the "BI" coverage. Our general damage would eat up 34 percent. Your general damages, the catastrophic harm, would eat up 15 percent.

Mr. MOSS. From the testimony of a number of witnesses, it would be impossible to determine, so it would not eat up anything. I am being facetious on that.

You stated that the legislative authority for the guaranteed protection plan is being sought in 17 States?

Mr. MAISONPIERRE. This is right.

Mr. MOSS. And that you have hopes that some legislation authorizing it either in the form as recommended or in modified form is going to be passed in one of those States, the State of Michigan.

Mr. MAISONPIERRE. This is right.

Mr. MOSS. If there is to be any progress made toward the implementation of such a plan, what timetable do you envision as being required to receive, we will say, the concurrence of even 25 of the 50 States?

Mr. MAISONPIERRE. Mr. Chairman, I am greatly disappointed, of course, that our hopes are down to one, but I think there is an explanation for this. The subject of automobile insurance reform is a highly complex subject. Without in any way being critical of the DOT staff, which I think has done an outstanding job, we have to recognize that a 1-year delay in presenting its report to this committee should be an indication of the complexity which it ran into in examining the existing system and in proposing some alternatives.

Many States have established study commissions—

Mr. MOSS. How many?

Mr. MAISONPIERRE. I could furnish this for the record.

Mr. MOSS. Would you, please? Without objection, we will hold the record at this point to receive it.

Mr. MAISONPIERRE. Thank you very much.

Mr. MOSS. Would you, in that, indicate whether they are established by order of the Governor, whether they are established as a result of legislative action? Because I think there is great difference in the significance of such commissions, depending on the source of their authority.

Mr. MAISONPIERRE. Yes, I will do so.

(The following information was received for the record:)

State automobile insurance studies

State:	Authority
Alabama-----	Legislature.
California-----	Do.
Colorado-----	Do.
Connecticut-----	Do.
Georgia-----	Insurance Department.
Hawaii-----	Legislature.
Idaho-----	Do.
Illinois-----	Do.
Kansas-----	Do.
Louisiana-----	Executive.
Maryland-----	Do.
Minnesota-----	Legislature.
Montana-----	Do.
Nebraska-----	Insurance Department.
New Jersey-----	Executive.
New York-----	Executive and Legislature.
North Carolina-----	Legislature.
North Dakota-----	Do.
Oregon-----	Do.
Tennessee-----	Do.
Virginia-----	Executive.
Wisconsin-----	Legislature.

Mr. MOSS. Whether the legislative are willing to fund. In the case of New York obviously the legislature for several years was unwilling to fund such a study.

MR. MAISONPIERRE. One of the reasons for the lack of willingness to fund was the recognition of the immensity of the problem of doing an adequate research job and the recognition that a thorough study was being made by the Federal Government.

When we have gone before State legislatures, State study commissions, we have been told a number of times, "Let us wait to see what the final findings and the reports of the Department of Transportation are." In spite of our disappointment, I think it is fair to say that the States really have not had much of an opportunity this legislative session to study the DOT report.

MR. MOSS. This squares very much with the testimony of the Commissioner of the State of New York, who I believe indicated that in the State legislatures the excuse is that we should wait until the Federal Government acts. And in the Federal Congress the excuse is urged on the Congress that we should wait until the States act.

I am very much concerned over the inaction of the States. I cannot, in good conscience, buy the theory that they have awaited this study. I know too many State legislators in State legislatures. I have talked to them about this. Do you know, not a one of them has mentioned this study as the basis for their expressing strong doubts that anything will happen in their State legislatures? I went to the trouble last evening, upon returning to my office, of calling several members of the California State Legislature, both its Senate and its Assembly. Because I wanted to just test some ideas with them. In not one instance was this study mentioned as having any impact upon the general impasse which has developed in the California Legislature on insurance legislation.

If you have anything that would indicate in the way of a study that this is a significant factor, I think it would be most helpful to us.

MR. MAISONPIERRE. With your permission, Mr. Chairman, I would like to review some of the findings of the study commission reports, the different commission reports, and submit these for the record.

MR. MOSS. If they will bear on that question, you have my permission. If there is no objection, we will hold the record open to receive that when it is supplied to the committee.

MR. MAISONPIERRE. Thank you very much, sir.

(The following information was received for the record:)

COMPARATIVE PURE LOSS COSTS
PRESENT SYSTEM: 25/50 BI, UM AND \$1,000 MEDICAL PAY
(Amount in percent)

Benefits	Present system	Alliance GPP \$2,000 medical and 30-day wait period	Volpe	H.R. 4994
Medical.....	27.6	32.3	34.3	32.5
Rehabilitation.....	0	0	2.7	3.6
Wage loss.....	15.5	17.7	22.8	20.2
Other expense.....	3.5	5.8	5.8	5.8
Fatalities.....	8.2	8.2	8.7	14.4
General damages.....	45.2	30.4	15.0	15.0
Total pure loss.....	100.0	94.3	89.3	19.5
Savings.....		5.7	10.7	8.5

THE COSTING BASE

The costing basis by which other plans are compared is a hypothetical package of present system coverages. It was assumed that policyholders have 25/50 BI liability, basic 10/20 limits UM, and \$1,000 medical payments coverages.

SIGNIFICANT ASPECTS OF COSTING

Medical: Each of the plans would allocate roughly the same amount to medical benefits. That is, in each plan medical benefits would increase from $\frac{1}{4}$ to $\frac{1}{2}$ present system pure loss costs. The increase in loss costs is due to an increase in first-party medical coverage. A 10% reduction in first-party medical to allow for collateral source recovery is an offset which reduces the difference in cost which would otherwise exist.

Rehabilitation: HR 4994 is most generous in allowing for all expenses of both physical and occupational therapy. It was assumed this expense could be as much as 10% of gross medical expense and it was costed as such. The Volpe Plan is not quite so generous as it allows for medical rehabilitation only.

The costs of rehabilitation were not reduced because of coverage limits (Volpe Plan indicates there would be limits) or because therapy might be paid from collateral sources, particularly government facilities.

WAGE LOSS

The Volpe Plan is significantly more generous than the GPP. The monthly recovery limit is \$1,000 for the Volpe Plan versus \$500 for GPP. Also, the Volpe Plan makes auto first-party benefits primary to other private sources.

HR 4994 is similar to the Volpe Plan in that both have \$1,000 a month limits on wage loss recovery. However, there is a difference between plans with respect to collateral sources. This accounts for the slightly lower cost for HR 4994 wage loss benefits. In HR 4994 any collateral insurance which contains an excess clause or is silent in this regard, is deemed to be the primary coverage.

FATALITIES

Recoveries in cases of fatality claims relative to pure loss costs are estimated now to be about 8% for 10/20 BI limits and 9% for 25/50 BI limits. When \$1,000 Medical Pay is included in the typical coverage package, fatality benefits are estimated at 8.2% of pure losses.

Each of the plans would allow at least the amount recovered in tort today. The Volpe Plan has additional $\frac{1}{2}$ of 1% present system pure loss costs for lump-sum burial benefits paid on a first-party basis. Estimate of HR 4994 benefits is for roughly 75% greater benefits to take into account the maximum of \$30,000 benefits to be paid on first-party basis for all death cases.

GENERAL DAMAGES

Benefits for general damages come in two distinct categories:

- (1) "Serious other factor" claims, and
- (2) All other claims.

Each of the plans would pay SOF claims similar to the present system, i.e., there would be a tort remedy available. It is estimated that SOF claims account for roughly 45% of present system general damages. The definition of an SOF claim for GPP is the same as was used in the AIA Survey—about 10% of all claims and 40% of all losses paid. The Volpe Plan and HR 4994 restrict this definition and it is assumed the latter plan pays only $\frac{2}{3}$ of the GPP third-party general damages for SOF claims.

Additionally, the GPP would pay other claimants on a schedule basis, 50% of medical up to \$500 and 100% of that portion of medical which exceeds \$500. This increases the GPP pure loss costs about eight percentage points of present system pure loss costs.

Mr. Moss. Now on the matter of nonrenewal, I think it is very important. Again I have, perhaps because of the connection with the original resolution and because of the chairing of this subcommittee, received a fairly significant volume of mail on this subject. And the strongest feelings I encounter are from those who are unable to renew.

even though they have had many years of satisfactory history with their insurer the carrier just refuses to renew. They have difficulty finding out why. Most of them can't find out why.

What are the reasons for nonrenewal where there is no record of accidents or bad driving?

MR. MAISONPIERRE. I have probed this with a number of company chief executives, because I have been faced with the very same question before. The first thing which I am told is this. "We do not cancel good business. We are after good business."

One of the answers which has been given to me is that there is perhaps a difficulty in misunderstanding between consumers and insurance company underwriters as to what constitutes an accident. I was shown a specific case of an individual who had said, "I have a good record and there is no reason why I should not be renewed." This fellow had had three creasings of his fenders in the last year. All were his own fault. He did not consider this as anything of any consequence. Maybe 5 or 6 six years ago this would have been of little consequence. This could have been repaired for \$25 or \$50. But the creasing of a fender today, Mr. Chairman, will cost \$300 or \$400 to repair.

MR. MOSS. Yes, I am fully aware of that. Within the past 6 weeks I have had my car in California and my car in Washington damaged, in both instances, while being stopped. I was not driving in either instance. In both instances, the other driver was cited and in both instances there was never any question as to which insurance company was going to pay for the damages. The damage was minor damage, visually at least, very minor damage runs two or three hundred dollars. So, I am very much aware of the high cost of repair.

MR. MAISONPIERRE. We will be endorsing your proposal when it comes up for hearing, "Federal standard in the sturdiness and damageability of automobiles." We feel this is the area which has driven the cost of insurance as high as it has gone.

MR. MOSS. But take that case of mine now. I had not driven either car involved in these accidents. Would that be cause for cancellation? It could, could it not?

MR. MAISONPIERRE. It certainly should not.

MR. MOSS. It should not. I have in mind a very prominent Californian—I shall not use his name. However, I will contact him and if he gives permission, I will put full details in the record. He was canceled and he has not had a fender creasing. He has had no kind of citation, no accident with any monetary loss of any kind.

MR. MAISONPIERRE. This, Mr. Chairman, is something which the company executives I spoke to can't understand. I will give you an example. I have been with the same company for the last 10 years. I am enjoying about a 15 percent rate credit because I have had no accident, including fender creasing. I don't think that I would have any problem changing companies and going to somebody else for insurance at this time, because I would be looked upon as a very desirable risk.

MR. MOSS. Do you live in an area that they also regard as being a desirable area to have an insured live? Isn't that another factor in failure to renew? At least they have told them, "We have decided to withdraw doing business in this area, therefore we are not going to renew."

Mr. MAISONPIERRE. Mr. Chairman, the rates in my State, the State of Maryland, are pretty hopelessly depressed, inadequate, so that companies don't particularly care to write in those areas. But I think that I have established that record of driving that I would be considered a real good risk. But when companies talk in terms of withdrawing from certain areas, they are withdrawing from the areas because their commissioner has not granted the type of rate increase——

Mr. Moss. I am talking about areas within a city. There are areas that appear to have an unusually difficult time getting insurance. I don't know why. Apparently there is a determination not to write business for people living within given areas of a city.

Mr. MAISONPIERRE. I have heard that charge made before Mr. Chairman, and our association is a hundred percent on record as opposing any so-called redlining.

Mr. Moss. As a matter of need to better understand some of the problems on which I legislate, I read the Action-Line type columns in the newspapers. They are highly informative on this matter of insurance cancellations and insurance failure to renew. I commend them to anyone who wants to see, day-by-day, the typical problems and complaints voiced by citizens who are denied the opportunity to have insurance.

I recognize some of them will set their case in the most favorable light, but not all of them. There are probably many of them who are very accurate in stating what they know about their case.

Mr. MAISONPIERRE. I might say, Mr. Chairman, that I am aware of at least one community where we have worked with the Action-Line type people, where they have sent to us complaints which they have received relevant to automobile insurance cancellation and nonrenewal. We have followed up for them the complaints and also whether the cancellation or notice of nonrenewal had any merit. This has worked very well, I think, in establishing a better community relationship between the insurance industry, the press and the consumers that we try to serve.

Mr. Moss. Do the member companies of your organization fail to renew on any basis other than driving experience?

Mr. MAISONPIERRE. Mr. Chairman, I really am not in a position to speak for individual company members. We have no policy——

Mr. Moss. You have no association?

Mr. MAISONPIERRE. We have no association policy on this.

Mr. Moss. Now, on the matter of young drivers, and again I speak as a parent who has been unhappy under the very high rates imposed on me because I had two—I now only have one under the age of 25. The willingness to take and place them as a class in a very high-rate category seems to persist, regardless of how excellent their own driving records might be. They can go on through the entire period when they are first covered by insurance until after they have reached 25 years of age, never having any kind of claim, never having any kind of citation, any kind of accident—yet the high level premium is demanded from them. It is usually a span of about nine years.

Mr. MAISONPIERRE. Of course, insurance is a pooling mechanism. You must pool the good with the bad.

Mr. Moss. I realize that.

Mr. MAISONPIERRE. You take the youngsters and, unfortunately, I have two on my policy, the industry has done a number of things.

Number one, it has tried at first to identify youngsters that are likely to have better driving records. It has provided a credit for those who have gone through some recognized driving school.

Number two, it has provided credit for those who keep a better than average scholastic record—a B average or better record—on the basis that these people seem to spend more time at their desks than they do on the highway. But the benefits which I get as an individual automobile owner also accrue to me if my children are good drivers. I get a credit for each year in which they have had no—for each accident-free year.

Mr. Moss. But it never equalizes, does it, putting them on an equal footing as other drivers?

Mr. MAISONPIERRE. No; because as a class I think it has been pretty well demonstrated that they cause, unfortunately, many more accidents.

Mr. Moss. There are a couple of items I want to touch on very briefly. The caliber of Federal regulation—and, certainly, serving upon this committee as I have for many years, I am very much alert to the failures of the regulatory boards and commissions—but do you think there is a greater volume of complaint over the activities of these agencies than over the typical State regulatory body?

Mr. MAISONPIERRE. I believe, Mr. Chairman, it is difficult perhaps to generalize in this area. There are certainly some Federal regulatory agencies which are doing a great job.

Mr. Moss. In the course of your testimony in responding to Mr. McCollister, you voiced some very strong concerns over broad-based State failure in the licensing of drivers.

Mr. MAISONPIERRE. Yes. I am not saying by any stretch of the imagination that because we have a State regulatory agency, whether it be the motor vehicle bureau, whether it be the insurance agency, it will be perfect. On the contrary, I think we need a great deal of improvement in the State regulatory system.

What I would like to stress, however, is that the advocates of Federal regulation of insurance have often looked and focused upon the defects of State regulation of insurance and have set these defects against a potential perfect Federal program. I think that we should recognize that just because we would have a Federal regulatory system would not in itself make it an improvement as such.

Mr. Moss. I would like to place in the record at this point, from Best Life News, the July 1966 edition, a speech by H. Clay Johnson, president of Royal Globe Insurance Co., where I think he deals quite candidly with this question of regulation and the matter of State versus Federal regulation. I think your reaction indicates you are familiar with it.

Mr. MAISONPIERRE. I am familiar with the speech and with Mr. Johnson, Mr. Chairman.

(The article referred to follows:)

[From Best's Insurance News—Life Edition, July 1966]

PLAIN TALK ABOUT THE POSSIBILITY AND MERIT OF FEDERAL SUPERVISION OF INSURANCE—"... THERE SURELY CAN BE DEVISED A BETTER MODE OF EXISTENCE THAN THAT WHICH WE CURRENTLY HAVE UNDER STATE REGULATION."

A suggestion that the insurance business recognize that federal regulation is perhaps "inescapable" and, if so, might be preferable to state regulation if the business were to help write the necessary legislation, was offered by H. Clay Johnson, president of the Royal-Globe Insurance Companies, at the annual meeting of the American Insurance Association at Pinehurst, N.C.

Mr. Johnson's statement represents a landmark of great significance, for it is the first public comment by an executive of stature in which state regulation is criticized as failing to perform and, in fact, as possibly hindering the business it oversees—while at the same time exclusive federal regulation is suggested to offer supervision with an interest in the continued health and welfare of the insurance industry.

Implicitly, Mr. Johnson's remarks were made with the knowledge and consent of the officials of the AIA. Agents, of whom about 75 were guests at the convention, were in general somewhat dismayed by the talk. They assumed the speech was as much a trial balloon as a condemnation-recommendation; but among many of the company executives there seemed to be a feeling of encouragement that someone had stood up to express widespread but unspoken thoughts on the relative merits of state and federal supervision.

Mr. Johnson by no means advocated federal supervision. He asked that there be realization that the possibility of federal supervision is growing more imminent, and if it is to come the insurance business should try to see that it does so on a basis by which the industry might participate in the establishment of that supervision.

The implications of Mr. Johnson's talk are enormous and concern the entire industry—fire, casualty and life companies alike.

(By H. Clay Johnson, president, Royal-Globe Insurance Cos.)

At the risk of being accused of heresy, I would like to venture a thought and at the same time suggest a course of action. The thought is that eventual federal regulation of our insurance business may be inescapable. The suggested course of action is that all segments of our business recognize this and begin now to consider possible ways in which our business could adapt to federal regulation without sacrificing its independence and its essentially competitive characteristics.

For more than 20 years our business has harbored the notion that state regulation was preferable to federal regulation. Initially, this was based on a fundamental desire to preserve the "status quo" which was considered a rather good mode of existence in those days. Lately, however, we have come to realize that the "status quo" isn't what it used to be and that there surely can be devised a better mode of existence than that which we currently have under state regulation. I needn't remind (the reader) of the more than \$1.25 billion which our business has lost in automobile insurance over the last 10 years, or the hundreds of millions of dollars which are now being lost on homeowners and other personal lines of insurance. Nor must I remind you that most of these deficits are attributable to the failure of state regulation to deal realistically with current rating problems. But our dissatisfactions with state control do not end there—they extend through a long list of other items, such as exorbitant cost of state examinations, conflicting legal requirements, redundant state deposits, retaliatory taxes, failure to control nonadmitted companies, failure to eradicate financially irresponsible companies, and the like. . . . Many other ills are currently undermining the health of our business, most of them again being attributable to the inadequacies of state regulation.

Realizing all this, one looking at our business from the outside is bound to ask: Why do you continue to think state regulation is good for you? And a more serious question could be asked: How long can private capital continue to finance the insurance business as it is now conducted?

I believe that many persons in our business, while silently suspecting that federal regulation might be preferable, have eschewed it in the belief that it would be unattainable on an exclusive basis. That would seem to be the nub of the problem. Surely, we don't want ever to find ourselves in the position of the truckers who are saddled with both state and federal regulation. However, it is possible if not probable that modern-day political and sociological pressures on the central government would force any federal regulation to become exclusive. In other words, this decision would be made without our having anything to do with it. Not only did the Supreme Court's SEUA decision pave the way for this in 1944 by declaring insurance to be interstate commerce when transacted across state lines, but it went far beyond that in showing the myriad ways in which insurance by its very method of operation comes under federal constitutional control. It was only the McCarren Act, enacted largely to meet the demands emanating from the insurance business and the states, that exempted our business from federal control and, as we have often had to remind ourselves, this exemption can be removed any time Congress wishes.

One of the things which has struck me is that most federal regulatory commissions seem to be interested in the continued health and welfare of the industries they regulate. We would certainly have to admit this is so in the case of the national banks under the present Comptroller of Currency, even though our friends from the National Association of Insurance Agents think he has gone too far in reference to encouraging their entrance into the insurance business. It seems to me that, generally speaking, federal commissions have greater respect for the business system than is found at the state level and what they offer is help—not hindrance. Of course, that may be partly because many of the industries the federal government regulates are monopolies rather than free competitors. But that is not true of national banks—if we could be regulated as they are, it would seem ideal. Shouldn't we at least consider whether it is legislatively possible, within constitutional limitations, to have federal regulation of this type? Just think how simple it would be to deal with one regulator instead of 50.

NEED BOLD THINKING

It is only natural, I suppose, for all of us as frail human beings to cling tenaciously to that which we currently have because of our fear of the unknown. But we should not be proud of this ostrich type of thinking since it is lacking in imagination and boldness of perspective and, what is even more important, it is lacking in reality.

One by one the court decisions are finding regulatory gaps which cannot constitutionally be filled by the States and which in time must be supplied by the Federal government. Very soon we shall have to face up to these questions, whether we like it or not. Natural disaster insurance and automobile safety are other areas where the Federal government will shortly consider legislation impinging on our field and raising the spectre of other things to come.

In the past, our business has always seemed to back into situations rather than meeting them head on—always being forced to adjust to change rather than managing it in advance. I would like to think that, with all of the complexity of problems which now surround us and the underwriting losses that engulf us, we shall have the temerity to take a good hard look at federal regulation as another way of life and as possibly offering a better insurance world for tomorrow. If we should then decide to make moves in this direction, we could help write the necessary legislation instead of having it jammed down our throats. I can think of no more important opportunity for insurance in the arena of political action.

Mr. Moss. I also would like to place in the record at this time the tabulation of responses from 1,557 persons in 47 States on the program of the "Advocates," which was a live television presentation of this question of insurance and the varying types.

(The tabulation referred to follows:)

THE NATION RESPONDS TO THE ADVOCATES ON AUTO INSURANCE

NOVEMBER 21, 1969.

In response to the nationwide public television broadcast debating the question, "Should we prohibit law suits over auto accidents and have each driver buy insurance for his own injuries?" the Advocates received 1,557 signatures from 47 states. Of the people writing in:

65.6% favored the proposal.

28.5% were opposed.

5.9% expressed other views*

During the November 9 broadcast, Michael Dukakis, Massachusetts State Representative, Professor Robert Keeton of Harvard Law School, and Harold Scott Baile of the American Insurance Association appeared as witnesses in favor of the proposal, while Craig Spangenberg, a trial lawyer from Cleveland, and Professor David Sargent of Suffolk University Law School spoke for the opposition. Richard E. Stewart, Superintendent of Insurance of the state of New York, as yet uncommitted on the proposal, was the principal guest to whom the arguments were addressed.

*This category includes those letters which expressed an interest in the auto insurance program or in a particular witness or advocate, but which did not express an opinion on the topic.

The Advocates, a new live, Sunday evening public affairs television series (10:00 p.m., EST), seeks to bring people into politics. Each week arguments are heard on both sides of an important "decidable question." At the end of each broadcast, viewers are encouraged to act on the question. The Advocates' staff has undertaken to tabulate views received and pass them on to the respondents' elected officials. The Advocates, as a program, takes no position on any issue debated.

The following is a detailed breakdown of the mail response to our auto insurance broadcast:

State	Pro	Con	Other	Total	State	Pro	Con	Other	Total
Alabama	3	2	0	5	Nebraska	2	3	0	5
Arizona	12	9	2	23	Nevada	7	0	0	7
Arkansas	0	2	0	2	New Hampshire	1	1	2	4
California	152	37	11	200	New Jersey	13	8	2	28
Colorado	3	1	0	4	New Mexico	8	1	1	10
Connecticut	12	2	3	17	New York	70	21	8	99
Delaware	0	3	0	3	North Carolina	5	2	0	7
Florida	28	8	5	41	Ohio	20	15	5	40
Georgia	4	1	0	5	Oklahoma	5	5	0	10
Hawaii	1	0	0	1	Oregon	10	5	3	18
Idaho	0	0	2	2	Pennsylvania	66	17	1	84
Illinois	52	14	1	67	Rhode Island	3	0	0	3
Indiana	4	2	0	6	South Carolina	0	1	0	1
Iowa	3	0	1	4	South Dakota	2	0	0	2
Kansas	4	3	0	7	Tennessee	8	3	0	11
Kentucky	3	1	0	4	Texas	17	1	3	21
Louisiana	1	0	0	1	Utah	5	3	0	8
Maine	0	3	0	3	Virginia	6	3	1	10
Maryland	8	2	0	10	Washington	23	13	4	40
Massachusetts	49	15	1	65	West Virginia	3	0	0	3
Michigan	18	3	0	21	Wisconsin	16	3	3	22
Minnesota	15	5	2	22	Washington, D.C.	2	0	0	2
Mississippi	1	2	0	3					
Missouri	4	4	0	8	Unknown	352	222	22	596
Montana	0	1	0	1	Foreign	1	0	0	1

Mr. Moss. I want to thank you very much for appearing here.

Mr. GUTHRIE. Mr. Chairman, in the interest of time, we are going to be soliciting the State insurance regulatory agencies with regard to their capability as far as regulation.

In the course of your testimony, Mr. Maisonnier, you talk about the reduction that would be brought about in costs. I take it, under H.R. 7514, the administration plan, and the guaranteed protection plan proposed by your agency. I don't want to take your time, but it would seem to me very useful if the bases upon which those determinations were arrived at were made available so that they could be shown in the record. Do you have them in the form that would permit that?

Mr. MAISONPIERRE. I have this in memorandum form. I wonder, Mr. Chairman, whether I could submit this separately in the record, whether the record can be kept open?

Mr. Moss. Yes, indeed, we can hold the record to receive it. You may submit it for the record.

Mr. MAISONPIERRE. Thank you very much, sir.

(See p. 653.)

Mr. ECKHARDT. Mr. Chairman, I wish to apologize to the Chair and to my colleagues for extended questioning, but I have one other question I would like to go into.

Mr. Moss. Go right ahead.

Mr. ECKHARDT. That is a question that has been raised by some of the further questions. On page 3, where you refer to "These limits are intended to curb nuisance claims and to offset the cost of extending

the basic no-fault benefit to accident victims generally," that was with reference to the figures that the chairman had asked you about, you then say "These limits do not apply in cases involving death, permanent disfigurement and dismemberment"—and I suggested the substitution of "permanent impairment"—"and in other exception circumstances where a court or jury finds such limitation would be unjust." I would gather that "pain and suffering" would be available in nearly all tort cases without the limitations.

Mr. MAISONPIERRE. This is one thing, Mr. Eckhardt, that really requires some field testing. To some degree, you will recognize that this is another way to get by the limitation that Massachusetts has. Massachusetts, you know, has a limitation to the extent that no "pain and suffering" will be paid unless a \$500 medical has been reached.

The experience so far in Massachusetts would indicate that a lot of cases, that there is a considerable lessening of the number of cases being paid for for "pain and suffering."

Mr. ECKHARDT. I understand your reasons. I am just trying to get what your bill provides. Do I understand that these limits are not applicable to cases involving death, cases involving permanent disfigurement, cases involving dismemberment and cases involving permanent impairment, and that these limitations are not applicable to the subject of permanent disfigurement, the subject of dismemberment, and the subject of permanent impairment? Do you get what I mean?

Mr. MAISONPIERRE. I am afraid I don't, Mr. Eckhardt.

Mr. ECKHARDT. If a person has a partial permanent disability because that does constitute permanent impairment, therefore, the limitation on general damage is not applicable at all to his case, I gather.

Mr. MAISONPIERRE. Right.

Mr. ECKHARDT. So you can consider questions like "pain and suffering" if the court in that State and if the law in that State permits it at the present time?

Mr. MAISONPIERRE. On the specific case, itself.

Mr. ECKHARDT. Right. I think that answers my question. I just wanted to be sure about it.

Mr. MAISONPIERRE. Yes.

Mr. MOSS. I want to thank you very much for appearing here. I know that the testimony will be helpful to the members of the committee..

Mr. MAISONPIERRE. Thank you very much, sir.

(The following material was received for the record:)

NEWS FROM AMERICAN MUTUAL INSURANCE ALLIANCE

Washington, D.C., April 28—A major group of insurance companies outlined reform today that would guarantee prompt payment of basic medical and income losses for auto crash victims.

The proposed guaranteed protection plan also would permit States to test the public acceptance and cost of making greater use of no-fault insurance, said the American Mutual Insurance Alliance, a voluntary association of more than 100 mutual insurers.

Andre Maisonpierre, vice president of the alliance, told the House Subcommittee on Commerce and Finance that the guaranteed protection plan would provide greater protection and fairer compensation than either the present auto insurance system or the no-fault plan proposed by Senator Philip Hart /D.-Mich./.

Maisonpierre said the plan would be "no-fault in the sense that the accident victim would collect for his basic economic losses, regardless of who caused the

accident. But it would be a fault system in the same sense that it would preserve the principle of personal accountability."

Under guaranteed protection, auto crash victims would collect up to \$8,000 from their own insurance companies—\$2,000 in medical benefits and \$6,000 in wage replacement benefits—regardless of who caused the injury. Higher amounts of protection could be purchased on an optional basis.

Those not at fault would retain the right to collect additional amounts from the other driver, including damages for permanent impairment, disfigurement, suffering and other personal injury beyond the out-of-pocket expenses.

The plan also would reduce insurance costs, relieve the burden on congested courts, regulate lawyers fees and prohibit unwarranted cancellation of insurance policies, Maisonnier said.

He said the alliance proposal is consistent in most respects with the recommendations of the Department of Transportation, on the basis of its two-year auto insurance study. Transportation Secretary John A. Volpe told the subcommittee last week that the States should move promptly to experiment with reform plans that make greater use of no-fault insurance coverages but which avoid "radical irreversible change."

"We agree with Mr. Volpe that /single quote/ there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go /end single quote/ in changing the auto insurance system, and that there exists warranted concern about what Mr. Volpe called the /single quote/ unknowable price and cost implication /end single quote/ of any major change in the system," said Maisonnier.

He said the guaranteed protection plan represent a responsible, evolutionary approach to auto reparation reform—one that allows the affected public and policymakers alike to test out the workability of the plan.

The alliance approach contrasts sharply with Senator Hart's proposed uniform Motor Vehicle Insurance Act, which Maisonnier described as "a risky leap into the dark, representing a drastic, irreversible change."

He also was critical of some aspects of the Volpe recommendations, noting that "it is inconsistent to call for experimentation . . . and then to suggest a plan which goes beyond the point of no return in the very first stage of implementation."

For further info contact Tom O'Day American Mutual Insurance Alliance, Washington, 783-7697, or residence after hours 301/262-1028.

Mr. Moss. Mr. Samuel Loescher, Professor of Economics, University of Indiana.

MR. LOESCHER.

STATEMENT OF SAMUEL M. LOESCHER, PROFESSOR OF ECONOMICS, INDIANA UNIVERSITY

MR. LOESCHER. Chairman Moss, and Congressmen of the House Subcommittee on Commerce and Finance, I find it an honor to have been invited to offer my views on the National No-Fault Motor Vehicle Insurance Act, as both an economist and a member of the Department of Transportation's recent advisory committee on auto insurance and compensation. My statement is titled "Toward Economic Equity and Efficiency: The Case for No-Fault Auto Insurance."

The economics of torts and compensations has loomed increasingly as an exciting, yet underdeveloped area in my academic and public policy activities. In conjunction with my consulting work on the Sherman Act, my current seminar in Naderism for Everyman, and my recent appointment to a new environmental studies program at Indiana University, I have discovered that decentralized class actions promise the possibility of invaluable social innovations against corporate combinations of oligopolistic pricing, corporate deception of consumers, and corporate contaminations of the environment. On the other hand, the continued application of insurable tort liability against noncom-

mercial motorists has appeared counterproductive. Insurable tort liability has not reduced automobile accidents, compensated victims either equitably or efficiently, and has not induced the design, manufacture, and purchase of vehicles which would tend to reduce the economic costs of accidents.

Cultural lags have institutionalized the law of wrongs so dysfunctionally in modern corporate, congested America that the welfare economist is less aware of a pervading rule of tort law than of a perverting anarchy of distorted law. The law of torts in the areas of environmental pollution, consumer safety, consumer warranty and antitrust suffers from infanticide, or, at best, prolonged adolescence. The law of torts in the area of noncommercial auto accidents suffers from senility.

In the days of horse and buggies it is probable that the tort law of highway collisions both deterred accidents and adequately compensated the wrongly damaged. Both low congestion and slow speeds made accident avoidance relatively easy. The slight popularity and availability of collision insurance for noncommercial carriage owners, moreover, made it probable that tort law would effectively deter accidents. Not only would the wrongdoer have to be prepared to compensate the damaged party entirely from his own pocket, but the probabilities were exceedingly great that negligence could be both easily, inexpensively, and unequivocally assigned in each carriage accident.

The facts of modern highway locomotion belie the very conditions which once made tort law an effective deterrent to accidents. High speed travel in powerful vehicles on congested highways make implausible any assumption that drivers have a continuous ability and determination to make last minute decisions rationally designed to avoid an accident. To the extent that the driver succeeds, the behavioral response must primarily correspond to that of a defensive maneuver, while the motivation is self-preservation. In any event, the economic value of the damage which any of our modern 4-wheel missiles can perpetrate (and the consequent potentially astronomical size of the compensatory damages which may be awarded the wronged), has guaranteed that most middle class automobile owners will carry adequate insurance against tort liability.

A system of noninsurable tort fines,¹ preferably set proportionally to an individual's prospective lifetime earnings, must be imposed under modern conditions if the economic value of accidents is to be reduced primarily through economic incentives to motivate more prudent driving patterns. I would endorse as a useful supplement to the economic arsenal of social controls the uninsurable tort fine. But I have strong reason to believe that auto owners can be influenced to reduce greatly the economic value of accidents by new and powerfully enhanced economic incentives to purchase vehicles which promise substantially greater safety, durability and ease of repair.

In the meantime, most of us will probably agree that reparations for the death and bodily injury of accident victims is the principal social function expected of automobile insurance. How well has liabil-

¹ See Guido Calabresi, "The Costs of Accidents," Yale, 1970, pp. 112, 118-128, 192-193, 267-273, 287, 306.

ity casualty insurance served the reparations function? In terms of both economic equity and efficiency, automobile tort insurance has served us poorly.

Briefly these are the following deficiencies on the equity side: Too many accident victims go uncompensated because of the difficulty of proving the absence of contributory negligence; the most seriously injured are substantially undercompensated—only the least injured tend to be overcompensated (by threatening to initiate the high costs of court litigation); the poor with bodily injuries tend to be compensated with a substantially lesser proportion of the estimated economic value of the wrong than the more affluent; compensation, on average, is exceedingly long delayed, with frequently tragic consequences for middle- as well as low-income families. Finally, rehabilitation (which might be viewed from the standpoint of efficiency, as much as equity, in the social economy) is impeded for most bodily injured in the absence of ongoing compensations to cover heavy medical expenditures.

As a socio-economic institution for loss-shifting the automobile liability system ranks poorly in comparison with, say, fire insurance, health insurance, or workmen's compensation. Robert Bombaugh has recently estimated that the total automobile liability system (inclusive of claimant's expenses for litigation and public costs for providing courts) on a very conservative basis, delivers only \$1.00 of net benefits for each \$2.07 expended.¹

No-fault insurance, by avoiding the high costs of litigation, promises to deliver the same amount of economic equity (through loss-shifting) at substantially less cost to society, or, to deliver substantially more economic equity at an unchanged resource cost to society. Most economists would opt for no-fault insurance for reason of its provision of superior economic equity—even if it offered no benefits in cost-efficiency in terms of a total delivery system.

But no-fault insurance promises, over time, to decrease the total economic cost of accidents relative to continuation of the liability system. Insurance premium differentials, by model of auto, will begin to reflect the safety, durability and ease-of-repair by magnitudes vastly exceeding anything now possible. Today, the entire premium for bodily injury (if we exclude the modest element for "medical" or "uninsured motorist") is solely a function of the safety built into some stranger's car. An auto motorist cannot be lured under a system of liability insurance to purchase a safer auto by means of a substantial discount for bodily injury insurance.

Some lure can be offered through collision insurance, but not near enough. Unofficially, and allowing for subrogation, I have been told that 60-70 percent of the total property damage to automobile claims are made pursuant to liability—only the residual to collision. Very roughly, collision claims constitute only \$1 out of every \$3 ultimately paid for damage to the auto vehicle. Yet the magnitude of specific differentials by model on a no-fault collision option would triple over current levels.

Let us suppose that ample imagination and economic incentive were currently to induce insurers to diagnose accident statistics to

¹ Robert L. Bombaugh, "The Department of Transportation's Auto Insurance Study and Accident Compensation Reform," 71 *Columbia Law Review* 207-240 at 231 (February 1971). Moreover, litigation expenses for claimants and insurers totaled about \$0.50 for each \$1 of net benefits to the compensated victims.

ascertain the qualities of damage resistance and ease of repair of different models. Suppose, following such an extensive analysis and evaluation, that under the fault system the \$100 deductible collision insurance were to cost \$30 per year for model A and \$50 per year for model B. Following a move to no-fault, and elimination of the payout contributions from property liability, the payments could initially rise, respectively, to \$90 a year and \$150 a year. The cost saving in collision insurance on A, though still only 40 percent less, rises from \$20 to \$60 a year. About 75 percent of all new cars are bought "on time," with required \$100 deductible collision insurance. Yet, even the knowledgeable consumer who eschews collision insurance, may choose his vehicle to some substantial degree on the basis of upkeep costs, when informed of the \$60 a year quantitative saving conferred by the insurance industry on model A over model B.

Suppose safety features on model A confer on it a \$100 no-fault insurance premium, while model B takes a \$190 no-fault premium, for the same person—in the same given rating territory, income class, age, driving record, et cetera. The auto purchaser can save an extra \$90 by opting for model A over model B on safety grounds. The total operating saving on insurance (or its economic equivalent) is \$150 a year.

No-fault insurance, assuming as I have that the tort exemption includes the property damage of other vehicles, provides powerful economics signals and incentives to purchasers of new autos to select vehicles tending to reduce the economic cost of accidents.

Most important, if no-fault insurance is introduced on a national level, so many new automobile purchasers throughout the nation will be encouraged, by consideration of insurance savings, to modify their preferred choice of auto model that manufacturers will become even more powerfully motivated to engineer autos offering substantially more safety, damage resistance, and ease of repair.

The business press reports that many consumers are tired of planned obsolescence, and of the auto as a status symbol. They want only reliable transportation.¹ Moreover, many consumers are shifting to small imports, domestic compacts and (among the young) even to motorcycles. Excepting the cycles, vast-operating economies are not offered by the compacts. But the many indicators of concern with operating economy suggest that a considerable fraction of American consumers can be expected to focus on insurance differentials and economies in the cool-calculating process of household capital investing.

Modest shifts in consumer model purchases will be reflected in magnified profit forecasts for auto manufacturers. One auto producers can be expected to be forced into a substantial rivalry in offering models which are better engineered to generate substantial savings on no-fault insurance and correlative deductible collision. The rivalry will probably reduce the profits of the American auto triopoly no more than did the styling rivalry of the past 20 years. But the shift of engineering talent in the big three from styling to functional safety, resistance to damage, and ease of repair may generate so much improvement in these dimensions that the total cost of the no-fault insurance system may be halved following a decade of its operation.

¹ "Detroit Deemphasizes the Styling Game," *Business Week*, Apr. 3, 1971, p. 16.

Indeed, the most valuable spin-offs from adoption of a national system of no-fault insurance may not even be found in the postulated halving of the typical eventual insurance premiums.

The most important gains to economic equity and efficiency may arise from the decongesting effects which a national move to no-fault insurance can have on both our court system and our talented trial bar. Social innovations of incalculable economic value to our Nation await the emergence of a for-profit, decentralized, free enterprise assault, in the interest of powerless consumers, against wrongs of the corporate powerful. The treble damage provisions of the Sherman Act await imaginative class action suits against legally untested combinations in restraint of trade. Moreover, the common law needs expending, or legislation needs passing, to grant standing to class action suits, in quest of substantial compensations, against corporate deceivers and polluters.¹ The compensations in return for tort damages are not the social end. The compensations and threatened future correlative compensations provide the economic signals and penalties whereby broadly defined environmental torts can be deterred and an economy offering substantially greater economic equity and efficiency made a reality.

That concludes my statement.

Mr. Moss. Thank you, sir.

Mr. Eckhardt?

Mr. ECKHARDT. Mr. Loescher, I want to compliment you for an extremely innovative approach to the question. I too have been interested in sowing into the insurance program incentives for safer vehicles. Indeed, I was preparing a bill to that effect and my approach would be somewhat like yours, but not precisely like yours. I had in mind some governmental establishment of safety standards upon which rates would be based and a provision requiring that the automobile manufacturer provide, along with the cost of a new car and based upon these standards, insurance coverage for the period of, say, 1 year.

Now I was suggesting this mode, because of its immediate impact on a particular model and because of its impact on future models to create an economic competitive advantage to the company producing the safer car because that company could sell it at a lower price. Do you think this might be a feasible approach?

Mr. LOESCHER. Yes, I think that is feasible. I think it is a variant on requiring posting in every auto retailer's establishment of some kind of standards, some kind of collision rate, given no-fault, on models for some kind of basis, typical insurer, or maybe even the whole series of rates, my model, according to each class of consumer.

Yours, I think, is a very good provision; especially since you only require that collision insurance be provided by the manufacturer, if I understand it correctly, for a year.

Mr. ECKHARDT. It would probably be the no-fault type of insurance for a year.

Mr. LOESCHER. Right.

Mr. ECKHARDT. Furthermore, it seems to me that it is entirely defensible legally and constitutionally to assume that if we adopt a plan by which persons are required by law to contribute to a pool re-

¹ See, e.g., Joseph L. Sax, *Defending the Environment: A Strategy for Citizen Action*, Knopf, 1971.

sulting in the compensation of those who are injured, we have just as much right to require automobile manufacturers who are also causers of the danger, to contribute to that pool.

So the standards established, even though they might fall relatively heavily on the unsafe producer or manufacturer, would seem to me to be wholly justified both legally and economically in such a system.

Mr. LOESCHER. I cannot help but agree. There seems to be no doubt that the manufacturer with the less safe, less resistant to damage, harder to repair vehicle would simply have to post higher prices to allow for the higher cost which would be incurred in maintaining these cars under this extra element of guarantee for the year.

Mr. ECKHARDT. Of course, that would work in two ways to induce him economically to produce a safer car. Number one, he would be in a bad competitive position with respect to pricing of the car, and, number two, he would be in a bad advertising position with respect to its sale. Because the computation of his position amongst other manufacturers by some official agency, it would seem to me, would be a powerful negative incentive to buying an unsafe car.

Mr. LOESCHER. I can't help but agree wholeheartedly. It seems to me that quantifying of this differential puts an element into nonprice competition far more powerful than what we had in the past with simply designing different types of lights, or recessed headlights, or recessed windshield wipers, or daggers in the front of the vehicle, or what have you. This is quantifying in economic terms, whether it is done by your particular proposal or by the one I mentioned, whereby we would harness the abilities of the insurance industry and make sure a quantitative valuation was put separately on each of the various models being offered to the public. I am in agreement.

Mr. ECKHARDT. Thank you very much, sir.

Mr. Moss. I have no questions at this time.

Mr. Guthrie, do you have any questions?

Mr. GUTHRIE. No, sir; I do not.

Mr. Moss. I do want to express the appreciation of the subcommittee for your testimony.

Mr. LOESCHER. Sir, while I listened to some witnesses I made a few comments. I do not know whether it is fair for me to take your time or not. I will try to be brief.

In order of the appearance of witnesses, in the instance of Mr. Schenk I had difficulty understanding why he would oppose the present legislation outstanding, since there would be nothing to prevent State legislatures in some sense from superseding that legislation by putting in standards superior. That is my first comment.

My second concerns a comment by Mr. Kronzer. This had to do with the first party insurers and the alleged difficulty of the insuree collecting from his insurer. One of the merits we have from an organization such as Consumer Reports is that it is in an excellent position to survey, it seems to me, the quality of service performed by first-party insurers. First-party insurers are keenly sensitive to the kinds of evaluations which they receive from Consumer Reports, and, in this instance, I think that the great bulk of anonymous and apparently powerless consumers can be effectively protected by such a communication device.

I have a couple of comments with respect to Mr. Worthington. With respect to some of the issue of States rights, some of my recent

research has proven to me that we can thank the passage of the Sherman Act in 1890 to a strong States rights Senator from Arkansas who was very concerned that the citizens of Arkansas could not be adequately protected were there not Federal legislation in the area of monopolies and restraint of trade. He was worried about corporations which would be domiciled outside Arkansas. It seems to me that many Representatives and Senators might be concerned about their own citizens when they go into other States.

Another point had to do with his statement concerning whether no-fault—Federal no-fault insurance and its institution could be viewed as superseding the judgment of the marketplace. It seems to me any kind of law is not determined in the marketplace. To me, the marketplace means the economic marketplace. It has emerged out of common law and statutory law, and I will comment on that one no further.

I'm very hesitant with this next one, it is rather touchy but I will go ahead. This has to do with the fruitfulness of resolutions. I am a professor, I deal with students daily. Students are very disillusioned with respect to the Congress, if you wish, sir, and they even have the support of Howard K. Smith on ABC who tells us that it is not sufficient for the Congress merely to make some resolution suggesting that the President take such and such policy with respect to Vietnam, but Congress can do it, it can cut off the funds. Pardon me, sir.

Mr. Moss. That is okay. We hear this all the time.

Mr. LOESCHER. I can't read my writing. I had something on Mr. Maisonnier. It can't be that important. I will skip that. Thank you very much, sir.

Mr. Moss. Of course, certainly on the matter of resolutions I don't think they are worth anything. I would regard the administration's proposal in that same category.

Mr. LOESCHER. Thank you, sir.

Mr. Moss. It is a waste of time.

Mr. ECKHARDT. Would the chairman yield?

Mr. Moss. Yes, indeed.

Mr. ECKHARDT. Since there has been mention of classifications, it seems to me if we "resolute" we will be doing about the same thing in the field of auto insurance that we would do if we followed the administration's proposal respecting class action.

Mr. Moss. I certainly will not challenge that statement.

Mr. Clayman will appear as the first witness tomorrow, and I understand that Mr. Beardsley has left. We will make a reservation, then, to receive for the record the statement of the American Trucking Associations, Inc. Is there objection?

Hearing none, it is so ordered.

(Mr. Beardsley's prepared statement follows:)

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL,
AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and members of the subcommittee, my name is Peter T. Beardsley, and I am a Vice-President, and the General Counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every state and the District of Columbia. Its office is located at 1616 P Street, N. W., Washington, D.C. 20036.

As a part of our overall activities, we often take a position before Congress respecting proposals which, if enacted, would have a significant impact upon the

trucking industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar. We confess to a lack of familiarity, however, with "no-fault" insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that "no-fault" means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his "net economic loss" as that term is defined in the bills. Based on that assumption, we take no position at this time respecting the "no-fault" principle as such.

We believe that in view of the very substantial change which these bills propose in the field of motor-vehicle accident insurance, it would be wise before seriously considering their enactment to await the results of experience under State "no-fault" laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, most of the bills here under consideration are not, in any practical sense, "no-fault" insofar as the trucking industry is concerned, and we have no alternative but to oppose them for that reason.

The notice of public hearings, dated April 2, 1971, issued by this Subcommittee indicates that the matters for consideration are: H. Con. Res. 241, and H. R. 4994 and H. R. 6528, as well as H. R. 3968, H. R. 5220, and H. R. 5460. The latter three bills are the same as S. 4339, introduced by Senator Hart in the last session of Congress, whereas H. R. 4994 and H. R. 6528 correspond to S. 945, which Senator Hart has introduced in the current session. It is to these latter bills that our remarks are largely directed.

We are very pleased to note that Chairman Moss has recently introduced H. R. 7514, which does not contain an objectionable feature which I will subsequently discuss, and we hope that if any "no-fault" insurance legislation is enacted, it will follow Mr. Moss' bill in this respect.

We take no position on H. Con. Res. 241, which is the resolution recommended by Secretary of Transportation Volpe in his testimony on S. 945 on March 18, 1971, before the Senate Commerce Committee.

The interstate motor carriers subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation, fall into several categories. Over 15,000 for-hire carriers (common and contract) are subject to both economic and safety regulation. There are additional thousands of for-hire carriers (mostly transporters of agricultural commodities), carriers which are subject to safety regulation by DOT but exempt from ICC economic regulation. It is on behalf of the "regulated" carriers, rather than the "exempt" carriers that this statement is filed. ATA also represents the interests of numerous private carriers of property through their membership in one or more of the ATA-affiliated State trucking associations, and this statement is filed on their behalf too.

The trucking industry's concern for highway safety originated in a natural, humanitarian desire to reduce the tragedy of death and injury in traffic, and in a determination to improve the reputation of the industry as a safe, courteous partner on the road.

In addition, there is a business incentive for maintaining an extensive safety program. The millions of trucks of all kinds in daily use on streets and highways are constantly exposed to accident-producing situations which can result in loss or damage to other highway users, to industry drivers and vehicles, and to customer freight. Such accidents have the potential of putting any motor carrier out of business because of the extremely high costs that are incurred through civil suits, workmen's compensation, vehicle repairs and freight claims. Those costs are direct expenses to the carrier, regardless of the amount of its insurance coverage, as truck insurance is written on a retrospective basis so that the premium for a given year is raised or lowered to reflect the accident cost experience for the previous year.

The loss potential faced by truck fleets and the retrospective method of rating insurance have been incentives for the conduct of carefully planned programs to prevent accidents.

Industry experience shows that driver selection is the key to the entire safety program, and so trucking companies try to insure that they do not "hire their problems." In employment interviews and reference checks of prospective drivers, personnel officials use nationally approved guidelines which prescribe rigorous qualifications. Past employment, credit background, and traffic record are among

the factors explored to determine an applicant's reliability, attitude and willingness to accept responsibility for his vehicle and cargo, and for the welfare of other highway users.

The industry's driver selection program had its beginnings in the 1920's and was adopted as a national standard in 1940. In the 1950's it was further improved through an industry-sponsored study by the School of Public Health of Harvard University which was designed to provide more information about driver motivation.

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle and techniques for safe driving. To develop driving proficiency he undergoes a lengthy probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truck driver is required to follow the code of "defensive driving," which places responsibility upon him to drive in such a way that he commits no driving errors himself and can protect himself against the mistakes of other drivers. If he is involved in an accident his company rules the accident as "preventable" or "non-preventable." A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right and the other driver was legally wrong. Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

Year	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
1948.....	17.0	18.0	80.0	81.0
1969.....	11.5	16.6	85.1	80.8

These figures are taken from the National Safety Council's publication, "Accident Facts," 1949 and 1970 editions, pp. 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse. The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger car. This is demonstrated by the following figures:

Intercity fleets (class I and II) :

Total truck mileage.....	12, 460, 796, 451
Total trucks involved in accidents.....	39, 302
Ratio (trucks involved per million miles).....	3. 15

All trucks:

Total truck mileage.....	206, 680, 000, 000
Total trucks involved in accidents.....	3, 075, 000
Ratio (trucks involved per million miles).....	14. 9

All passenger cars:

Total passenger car mileage.....	849, 633, 000, 000
Total cars involved in accidents.....	22, 800, 000
Ratio (passenger cars involved per million miles).....	26. 8

The Class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Carrier Safety, Department of Transportation. A Class I carrier is one whose annual gross operating revenue is \$1 million or more. A Class II carrier is one whose annual gross operating

revenue is \$300,000, but less than \$1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the federal government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation. The mileage figures for both the second and third categories are those of the Department of Transportation (Highway Statistics, 1969, Table VM-1, p. 73), and the accident figures are those of the National Safety Council (Accident Facts, 1970 ed., p. 56). 1969 figures are used, as they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers to significantly reduce the heavy costs of accident involvement. But even though the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truck drivers could not in any way have prevented 70% of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work. Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road. If there is to be a shift to a "no-fault" basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But instead of being rewarded for their successful efforts to reduce highway accidents, H.R. 4994 and H.R. 6528 would subject them to discriminatory treatment. We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles. There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when they cause an accident in which the operator's trucks are involved, but the truck owners will be assessed a major share of the cost resulting from the very same accidents! Technically, this may be "no fault" insurance: practically, it is insurance which arbitrarily assigns a great majority of the blame (cost) to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their drivers contributed in any degree to an accident. However, the system quite often protects the carriers when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, H.R. 4994 and H.R. 6528 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truck driver is a skilled professional who must meet strict physical requirements every two years and who is limited to a maximum of ten hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly-scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15 and 20 hours of driving following an eight-hour work day. The truck driver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over-the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truck driver can become involved in an accident that he can in no way avoid. Under the provisions of these bills, the cost of such accidents

would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of these bills which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bills:

A. Truck and trailer unit, westbound, in extreme right lane of 4-lane divided highway.

B. Passenger car with 4 occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

Result: All occupants of car severely injured. No injury to truck driver.

PRESENT SYSTEM

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

H.R. 4994 AND 6528

These bills require payment of up to \$1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no specified limits on costs for medical, hospital, surgical, etc., services, and physical and occupational therapy and rehabilitation. Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virtue of the expenses covered by "economic" loss under § 2(10) of the bills.

Under the terms of these bills by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upwards of 90% of the loss incurred by the occupants of the passenger car. While we assume the figure would be somewhat lower, the bills give the Secretary of Transportation complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bills clearly indicate, in the same section ((5) (7) (B)), that the Secretary could determine that such responsibility would exceed 70%. The definition of "ordinary passenger automobile" contained in the bills includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

These bills are contrary to the principle of "no-fault" insurance because they penalize motor carriers by placing them under a "fault" system of insurance rather than a "no-fault" system. They hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carrier vehicles are always responsible for such accidents.

The prime objective of "no-fault" insurance is to provide that each party to an accident pay for his own losses but the provisions of these bills relating to accidents involving large vehicles eliminate any such consideration and require that motor carriers pay without regard for ability of other parties involved to pay their costs.

One of the claims made for "no-fault" insurance is that premium costs will be reduced, but these bills, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance. Under the retrospective rating plan those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industry includes approximately 1,500 Class I carriers, 2,000 Class II carriers, and, in addition, 11,700 Class III carriers (those whose annual gross revenues are less than \$300,000 and whose fleets consist of a small number of vehicles). All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and, to some extent, water carriers. Because of the competition of other transport modes—for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

As noted earlier, my discussion of the bills before you has been almost entirely with respect to H.R. 4994 and H.R. 6528. As stated, we are pleased that Chairman

Moss has recently introduced H.R. 7514. As we read this bill, it would eliminate that provision which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the "no fault" principle. Again, let me say that we earnestly hope that—if federal "no fault" insurance legislation is enacted—it follow the lines of H.R. 7514 in this respect.

There is another aspect of these bills which seems entirely out of keeping with the "no-fault" philosophy. I refer to § 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident. First off, we think the approach suggested by Secretary of Transportation Volpe in his appearance before the Senate Commerce Committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to § 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident. Just as the bills require owners of passenger cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter. Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–1969:*

Year	Number of accidents	Fatalities	Injuries
1967.....	3, 932	1, 632	3, 812
1968.....	3, 816	1, 546	3, 744
1969.....	3, 774	1, 490	3, 669

If "no fault" is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses. Under these bills, the Secretary of Transportation might well decide to assign 75% of the net economic loss incurred by a passenger car driver in an accident with a truck or bus to the insurer of the latter vehicles. By the same token, the bill should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Mr. Moss. The committee will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 4:30 p.m., the hearing adjourned, to reconvene Thursday, April 29, 1971, at 10 a.m.)

*Accident Bulletin No. 138, Federal Railroad Administration, Table 6, p. 2.

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